Supreme Court of the United States

OCTOBER TERM, 1926

No. 678

TEXAS AND NEW ORLEANS RAILROAD COMPANY, THE TEXAS AND PACIFIC RAILWAY COMPANY, ABILENE & SOUTHERN RAILWAY COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND INTER-STATE COMMERCE COMMISSION.

SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

VOL. II

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Interstate between Montana, North and South Dakota, etc., the rates are also expressed in dollars and cents per car, the horse earnings averaging 8.5 per cent greater than the cattle earnings.

On page 14 I show in the part the average earnings on horses and mules per car, per car-mile and per ton-mile for certain representative western roads for 1924, and I show what the earnings would be under the 12268 scale for similar hauls and with similar loading.

On the Milwaukee, for example, the average earning per car was $71.04. If the 12268 scale applied generally, the [fol. 787] earnings would be $83.07.

It is our position in the edible livestock case, Docket 17000 part 9, that a common scale of rates should apply throughout the eastern part of W. T. L. territory and we are suggesting as a basis for that readjustment the Docket 12268, modified for the shorter hauls.

Part of the modification was up and part of it down.

On page 15 I show the average earnings per ton and per ton-mile on horses, catttle and hogs vs. the earnings on the general commodity of groups, the information being shown for three representative western trunk-line carriers and for 59 western roads averaged.

There are certain commodities that have heavy earnings per car and per car-mile on account of greater loading but I believe the commission should consider not only the car and the car-mile earnings but also the earnings per ton and per ton-mile and on that basis the present rates on horses and mules in this northwestern territory earn revenue far exceeding the average on all carload traffic or for the more important commodity groups.

Page 16 develops the situation in a somewhat different manner. This particular exhibit was made up for the edible live stock case and does not show horses separately. However, I have already shown that the earnings on horses [fol. 788] exceed those on catttle and hogs and page 16 shows that the cattle and hog earnings per ton and per ton-mile greatly exceed the per ton and per ton-mile earnings on other commodities.

For the Milwaukee in 1924 the average haul on horses and mules was 271 miles, and the earnings per ton 6.07 and per ton-mile, 22.4 mills. Under the first graph, that point would appear slightly above the top line, just to the left of

the next to the last line on the right. On the per ton-mile it would appear in approximately the center of the upper right-hand corner.

For the C., St. P., M. & O. in 1924 the average haul on horses and mules was 114.6 miles, the average earnings per ton $3.455, and the average earnings per ton-mile 30.14 mills.

Page 17 consists of extracts from representative decisions of the Interstate Commerce Commission regarding the impropriety of comparing car and car-mile earnings on light loading vs. heavy-loading commodities, and is self-explanatory.

The data on page 17-A is offered for the purpose of affording a contrast between the earnings on horses and mules and the earnings on a high-grade line of commodities, i. e. fruits and vegetables from California points. These rates have recently been considered by the commission in California Growers & Shippers Protective League vs. S. P. 129 I. C. C. 25, and the rate of $1.73 from California to [fol. 789] transcontinental groups A to M. except J. were reduced to $1.60 and the Groups J rate was reduced to $1.50.

The exhibit shows the earnings under the prior rate but even those earnings on that high-grade traffic are very much lower than any of the horse and mule rates that I have been able to find in this territory.

The revised fruit rates were prescribed adjusted to conform to the provisions of the Hoch-Smith Resolution and I believe that the horse producers in this territory are also entitled to consideration under the terms of that resolution.

I want to make a correction on this page. In the next to the last column it reads, "Average revenue per ton-mile in mills on paying load." It should read on the "gross" load.

Page 19 is offered for the purpose of showing the high level of the Docket 12368 scale on horses and mules compared with the rates applicable in immediately adjacent territory in Minnesota, Illinois, Iowa and also under certain interstate adjustments. The details are self-explanatory.

The figure 12300 is a typographical error. That should be 23,000 pounds.

Pages 20 and 21 are offered for the purpose of further illustrating the very high level of the Docket 12268 horse rates compared with the rates in effect in adjacent districts.

The graph on page 21 illustrates the adjustment from a representative South Dakota line, i. e., that of the C., M., [fol. 790] St. P. & P. leading northwest from Sioux City to Rapid City, compared with the adjustment in effect from Kansas to Kansas City; Nebraska points to Omaha, Minnesota, and North Dakota to South St. Paul and under the Iowa and Minnesota state scales.

The details upon which the graph is based are shown on page 20. The pages are, I believe, self-explanatory and they serve to further indicate a very high level of the present horse and mule rates from South Dakota to a typical market, Sioux City.

The comparative adjustment to other markets such as Omaha, South St. Paul, is substantially similar to that shown for Sioux City.

These proceedings, as broadened by the commission's order of January 4, 1926, bring into issue the question of rates on horses and mules from stations in South Dakota and Nebraska but do not involve the rates from all of the adjacent territory, including Minnesota, Iowa, North Dakota, Wyoming, Montana, etc.

I now wish to show in detail the great differences which already exist between the rates on horses and mules from points in South Dakota versus the rates from the adjacent districts. The present situation is most seriously discriminatory against South Dakota interests and any further advance in the South Dakota rates, unaccompanied by like increase from all of the adjacent territory, including Iowa, [fol. 791] Illinois, Wisconsin, Minnesota, North Dakota, Montana and Wyoming, would increase this unjust discrimination to the extent of the advance made from South Dakota.

Various complaints have been made to the board concerning the Milwaukee adjustment, the rates on live stock of various kinds from South Dakota points compared with the rates from the adjacent districts. I have illustrated, on page 22, the situation insofar as it relates to relative rates from South Dakota versus Iowa to the various Iowa destinations and also South Omaha, Neb., which takes, from Iowa points, the Iowa distance basis to Council Bluffs plus a bridge toll.

The graph shows the situation from points along the line of the C. & N. W. Railway extending northwesterly from Omaha through Sioux City and Hawarden, Ia., and Alcester

and Huron to Pierre, S. D. This situation is fairly representative of that existing on other lines of railroad. The map-sketch illustrates the location of the lines and stations and the graph the adjustment in rates.

In South Omaha, from Hawarden, Ia., 140 miles, the present rate on horses is 22½ cents. From Alcester, S. D., but 9 miles more distant, just across the boundary line, the rate is 22½ cents, an increase in rate of 31 per cent for an increase in mileage of but 6.4 per cent, with a corresponding difference at all other points beyond Alcester. Under the [fol. 792] Iowa distance scale, Boyd's I. C. C. A-1626, the rate on horses is lower than the rate on single-deck hogs.

This commission in various cases, including 12268, has found that general conditions are not substantially dissimilar in northwest Iowa versus southeastern South Dakota. The rates ought to be substantially the same and the Examiner can readily perceive that there should be no further advance in the South Dakota rates unless they are shown to be substantially too low and further unless the situation in the entire district is taken care of at the same time. There is a substantial movement of horses from South Dakota to Iowa points as indicated by pages 6 to 12. What has been shown by this graph respecting differences in rates to South Omaha from South Dakota versus Iowa points is likewise true respecting rates to Sioux City, Cedar Rapids and all other stations in Iowa. The point we wish to urge most strongly is that it would be wrong, we believe, for this commission to make any increase in the South Dakota rates unless the entire adjustment in these northwest states is overhauled.

Page 23 is a sketch illustrating the rates on horses and mules from representative destinations in North Dakota and South Dakota to an important market, namely, St. Paul, Minn.; and is self-explanatory.

Page 24 illustrates a situation similar to that shown on [fol. 793] page 22 respecting rates to a representative Minnesota market, South St. Paul, from Minnesota stations versus South Dakota stations. For the purpose of this showing I have taken points along the main line of the C., M. & St. P., as representative, the location of the line and stations being shown in the sketch a substantially similar situation exists respecting rates from all other lines of railroad from South Dakota to South St. Paul and also to other Minnesota destinations. There is already an

abnormal difference, particularly in rates on horses from the South Dakota stations versus the Minnesota stations. The rate from Ortonville, Minn., to South St. Paul is 26 cents and that from Milbank, S. D., 32 cents, a difference in rate of 6 cents per hundred pounds for a difference in distance of but 11 miles. Under the Minnesota adjustment the rate on horses is lower than the rate on hogs.

The commission in various cases, including the Holmes & Hallowell case, 60 I. C. C. 687 and 69 I. C. C. 11, has found that an identical basis of rates should apply from the adjacent Minnesota and South Dakota districts and that same action has been taking respecting class rates in the Fargo cases, 98 I. C. C. 691, in the Watertown case, 101 I. C. C. 441, and other proceedings.

I urge most strongly that the commission should certainly make no further increase in these rates from the South Dakota points unless a complete revision is made in the livestock rates throughout this territory. The South [fol. 794] Dakota producers and shippers are in the sharpest competition with producers and shippers in Minnesota and Iowa and not with those interests in the Southwest.

The rates from South Dakota to South St. Paul, Duluth and other markets are also quite generally on a basis somewhat higher from the North Dakota points to those same markets and an increase from North Dakota would result in discrimination against directly competing interests and would be of no assistance whatever to interests in the Southwest, who have little, if any, connection with this territory. The adjustment to other markets such as East St. Louis, Ill., St. Louis, Mo., etc., is, even under the present tariffs, prejudicial to South Dakota. For example, the rate to East St. Louis from Newell, S. D., 1082 miles, is $167.90 per standard car, whereas for 1157 miles from Big Muddy, Wyoming, the rate to East St. Louis is $156 per car, $11.90 per car less for a haul 75 miles greater than from Newell. From Great Falls, Mont., to Sioux City, for example, 1162 miles, the present charge per standard car is $166.65, compared with $167.90 for but 1082 miles from Newell to East St. Louis. I could readily call attention to almost innumerable comparisons of this nature which go to indicate that even the present rates on horses and mules from South Dakota are unreasonably high compared with rates from the adjacent districts.

Pages 25 and 26 are offered to support my previous state-
[fol. 795] ment that there is no justification for any higher level of rates from eastern South Dakota than from the adjacent Minnesota district.

Page 25 shows the substantially similar development east and west of the Minnesota line and page 26 shows the adjustment prescribed and the conclusions reached by the commission in another case involving substantially similar situations, i. e., improper rate differences along the eastern South Dakota-Minnesota border.

Any increase in the rates from South Dakota to South St. Paul unaccompanied by an equal advance in rates from Minnesota points would exaggerate an already wholly improper situation.

Page 29 is largely self-explanatory and is offered for the purpose of showing the low purchasing power of horses compared with other commodities. The exhibit contains the latest data available when it was made up, at which time the purchasing power of horses was but 34 per cent of the normal.

I consider the normal the average of August 1909 to July 1914.

Pages 32, 33 and 34, are offered for the purpose of illustrating certain phases of the economic situation in this territory.

Our people in South Dakota are largely farmers. Many of these produce horses in excess of their requirements and [fol. 796] the markets for such animals are almost entirely outside of South Dakota. The prices paid are ordinarly the going prices at the destination less all transportation and handling charges.

The point I wish to make is that the farmers will be the ones compelled to pay increased rates if any result from this proceeding. They are still in an unfavorable economic position and should not be required to do so.

The data on these three pages are, I believe, largely self explanatory. The data contained therein were the latest available when the exhibit was made up about a year ago. There has been no substantial change in the situation since that time.

Page 35 shows the loaded and empty car miles on the various classes of equipment for October, 1923, on the C., M., & St. P. & P., and the C., B. & Q., separately, and on

the 8 roads combined, as shown in part 3. The exhibit is self-explanatory.

Our position in this case is that the horse and mule rates from western trunk-line territory to the markets therein need not and should not be on the same basis as the rates locally within the southwest.

I have called attention to the substantially larger volume of movement from South Dakota and other western trunk-line states than from the southwest. The value of the majority of the animals produced in this territory is less than in the southwestern states.

[fol. 797] Our livestock rates generally from the northwest are less than those in the southwest so also are the rates on various commodities including those established by the commission as well as those published voluntarily by the carriers.

On page 36 and 37 I show examples of the differences in rates on grain, on live stock, roofing materials, brick and classes.

The details are, I believe, self-explanatory.

Several of the subsequent pages deal particularly with the question of transportation and traffic conditions in South Dakota and in adjacent districts. The carriers frequently call attention to the alleged unfavorable conditions in South Dakota due to a comparatively light density of traffic on certain branch lines. Their statements, however, tell only a part of the story.

For example, the transportation and maintenance expenses per mile of road on the South Dakota lines is every much less indeed than corresponding expenses on lines of the same companies outside of South Dakota. The details of the facts taken from annual reports of the carriers to the South Dakota Board and to the Interstate Commerce Commission are shown on page 37, Sub 1.

On the C. & N. W. Railway, for example, the combined operating and maintenance expenses, traffic expenses, [fol. 798] transportation, miscellaneous and general expenses for the lines in South Dakota average per mile of road but 35.2 per cent of the corresponding expenses for the lines of that company outside of South Dakota.

On the M. & St. L., the South Dakota expenses average per mile of road but 34.2 per cent of corresponding expenses for the lines outside of the state.

It is our position that the amounts charged against South Dakota operations are in various instances too great, yet under the carriers' own showing the expenses incurred within South Dakota are very much less than the expenses on their system as a whole.

Manifestly, it does not require as large a volume of traffic or business to support such lines as would be required where the value of the property and the operating and maintenance costs are much greater.

Page 38 shows the situation respecting traffic density on a typical western trunk-line line, the Milwaukee.

The details, I believe, are self-explanatory.

The column "Traffic density" is in tons per mile.

Page 38, Sub 1, is similar to page 38, except that it shows the traffic density for the Chicago North Western and is also self-explanatory.

Pages 39, 40 and 41 show the situation on the lines of the C., B. & Q. The details also are largely self-explanatory. [fol. 799] Page 42 shows the situation on the lines of the Northern Pacific railroad.

Page 43 shows the situation on the lines of the Rock Island and Union Pacific in Nebraska, Kansas and Colorado.

Page 44 and 45 illustrate the situation on the lines of the Great Northern in Iowa, Minnesota, North Dakota and South Dakota and Wisconsin.

I made the general statement that the value of the railroad lines as well as the operating and mainteance costs in South Dakota were substantially less than corresponding values for the lines outside of South Dakota.

The data on pages 46 and 47 are offered to indicate the approximate situation only.

The exhibit is based upon the underlying situation of the Engineering Department of the Commission's Bureau of Valuation and shows the situation up to December 31st, 1925, only.

Since this exhibit was prepared, the commission has issued the valuation reports for the North Western, Burlington and Great Northern lines but the final reports do not differ greatly from the tentative figures.

The exhibit is not offered to show the actual values. It is offered to show the greatly higher value of the lines outside of South Dakota than the lines within the state,

[fol. 800] and the situation in that connection is shown in the final valuation decisions for the North Western and the Burlington to be substantially the same as shown on these two pages.

Pages 48, 49, 50, 51 and 52 are offered to illustrate certain other phases of the situation in the northwest. These exhibits were prepared some little time ago and show the situation as of 1924, but the comparative situation today is substantially similar to that there outlined.

Exhibit C-173 is offered to illustrate the adjustment of edible live stock rates proposed by the South Dakota Railroad Commission in the live stock investigation, Docket 17000, Part 9, and we are proposing in this case that the rates on horses throughout the territory involved be constructed with reference to the rates that shall be found reasonable on cattle in the general live stock investigation.

The commission has in several cases, including the South Dakota case, Docket 12268, established rates on horses based on 115 per cent of the fat cattle rates. The adjustment corresponds quite closely with that originally maintained by the carriers as shown in connection with Exhibit C-173, page 8; it also harmonizes quite closely with the relationship between horses and fat cattle existing today in much of this northwest territory. As a matter of fact, based on the present average difference in value on horses [fol. 801] vs. fat cattle, there is no justification for placing horse rates on a basis 115 per cent of the cattle rates. The difference might properly be substantially lower.

Furthermore, since the minimum weight on horses is ordinarily 23,000 pounds compared with 22,000 pounds on cattle, that feature also might justify rates on horses less than 115 per cent of the cattle rates. A basis of rates on horses 115 per cent of the cattle rates with a higher 23,000 minimum on horses, results in earnings that are ordinarily around 120 per cent of the fat cattle revenue and that, I believe, is the very maximum basis that should be considered, especially in this northwestern territory. In fact, I think the equities of the situation would justify a difference of not more than 10 per cent in car earnings.

The only important transportation reason why horses might properly take rates somewhat higher than fat cattle is possibly the somewhat larger loss and damage claim payments, and the need of somewhat greater care in the prepa-

ration of the car. Injuries, such as cuts, etc., to horses ordinarily are more costly than are similar injuries to edible live stock, but in actual practice I find that the loss and damage claim payments on horses are but very little greater than those on cattle.

For example, shown on page 6 of my exhibit C-173, for the year ended June 30, 1915, the C. & N. W. Railway paid, [fol. 802] in loss and damage claims on hogs, 27 cents per car, on horses, 1.34 per car, on cattle, 50 cents per car and on sheep 48 cents per car.

Increased liability is the main difference in cost as between the handling of cattle and horses. For the period and for the carrier cited, the horse claims average only 84 cents per car more than the cattle claims. That item, therefore, justifies little, if any, higher rates on horses than on cattle. However, for the purpose of this case we are willing to subscribe to horse rates not more than 115 per cent of fat cattle rates, and if the adjustment to be recommended by me is established interstate, I am willing to recommend a corresponding adjustment of the South Dakota intrastate rates.

Page 1 of the Exhibit C-174 illustrates the division of western trunk-line territory proposed in the Edible Live Stock case.

The carriers propose three main rate districts. The first east of Duluth, the Twin Cities, Sioux Falls, Sioux City, Grand Island, Superior, Herington, Kansas, etc., as indicated by the small dotted line on the map; another district west of the line just described and east of Minot and Bismarck, North Dakota, the Missouri River in South Dakota thence east of Alliance, Cheyenne and the Colorado common points as shown by a similar dotted line, and the third west of that boundary line and including the eastern part of Mon- [fol. 803] tana and Wyoming except the Union Pacific, and also shown by small dotted line.

Page 1 of Exhibit C-174 is the graph of the carriers' proposal with certain conditions.

In that proceeding the witness for the South Dakota suggested the division of that same territory into only two districts; one south and east of the heavy line extending west from Duluth to Bismarck thence south, or if that was too far west, then along the broken line through Duluth, Granite Falls, Aberdeen, Mitchell, Oneal, Grand Island, etc.

That was to be designated "District 1"; "District 2" to include the territory north and west of that just described to the Canadian border; to Great Falls, Montana, Wyuta, Wyoming, thence along the Colorado Common Points' territory.

The South Dakota proposed scale of fat cattle rates for District 1 is outlined on page 2 of Exhibit C-174. This scale is based with consideration of the scales established by the commission in the South Dakota live stock case, Docket 12268, and in Docket 15052, which involved rates from territory west of Wyoming to the Missouri River markets South St. Paul and Chicago. The scale which was established in that case was based upon the South Dakota scale with differentials added for the distances over 500 miles. The South Dakota proposed cattle scale is somewhat lower than the 12268 scale for distances up to 700 [fol. 804] miles, beyond which point the proposed cattle scale is the same as, or higher, than the 12268 standard scale.

For application locally in Scale 2 territory the South Dakota proposal was for a basis of rates 110 per cent of the District 1 scale, those rates also being shown on page 2. Rates between the two districts would be made by a composite of the two scales in line with the formula suggested in the commission's questionnaire in the Edible Live Stock Case and in line with the basis prescribed by the commission in other cases including the Watertown and Fargo Class-Rate cases, 101 I. C. C. 441 and 98 I. C. C. 691.

On page 3 of the exhibit I have shown for various mileages from 10 to 1200 miles, the horse rates prescribed in the Docket 12268 standard scale, those rates being 115 per cent of the fat cattle rates. I have shown in the second column the horse rates proposed herein, which rates are based on 115 per cent of the rates suggested in the edible live stock case on fat cattle for application within District 1.

The third rate column shows a scale of horse rates based on 120 per cent of the Dimmitt-Caudle-Smith scale revised to date. In that particular case the commission based the horse rates on 120 per cent of the fat cattle rates, but in the various subsequent cases in western trunk-line territory, including the South Dakota and Nebraska cases the 115 per cent basis was used.

[fol. 805] The succeeding rate columns show the horse rates in effect in Iowa and Minnesota and in Nebraska under

the Nebraska discrimination case, Docket 13273. The details are, I believe, self-explanatory.

The horse rates shown on page 3 of this exhibit are intended for application throughout my proposed District 1 as outlined on the sketch, page 1 of this exhibit. I understand, of course, that all of the horse rates in that section are not directly before the commission in this case, whereas all of the cattle rates are, but I suggest the scale as the maximum basis for application within that part of proposed rate District 1 that is involved in this case.

For application within proposed rate district 2 I suggest a scale not in excess of 110 per cent of the District 1 proposed scale, and for application between the two districts I recommend rates based on a composite of the two scales along the line suggested in the commissioner's questionnaire in the general live stock case.

Our proposal in brief is that if any changes are to be made in horse and mule rates that they be based on not to exceed 115 per cent of the fat cattle rates to be established in Docket 17000, Part 9.

If the composite is not used you get severe jumps at these lines between the districts. The composite of the two scales will level off that severe difference and make a more [fol. 806] equitable adjustment. It is a well established fact in rate construction in this territory that conditions exist in the western part of the state which warrant higher rates than in the eastern. Our South Dakota rates, intrastate, are practically all of them 10 per cent higher, and the same thing exists in some other scales.

Exhibits C-173 and C-174, Witness Carr, were duly received in evidence.)

Cross-examination.

By Mr. Outlaw:

I agree with the views Mr. Ross expressed in his testimony, with respect to the propriety of making lower rates on a commodity that moves in considerable volume, in a normally high rated territory than in the lower rated territory where the movement is relatively less.

The farm prices for horses in 1927 were as follows: South Dakota, $47; North Dakota, $53; Nebraska, $56;

Kansas, $41; Minnesota, $77; South Carolina, $77; North Carolina, $83; Florida, $84; New York, $109; Pennsylvania, $99; Massachusetts, $119; Ohio, $95; Michigan, $89. Authority, the Agricultural Year Book of the year 1927. I assume this includes the entire census of horses. As to whether they are black or white, I couldn't comment. I haven't shown any figures for the mules. I have admitted that mules are of a little higher value than horses, but we had relatively few.

Page 17-A of Exhibit C-173 is merely a comparison of [fol. 807] what the earnings are on a commodity that requires as much or more expedited service and handling in special equipment than livestock.

Page 8, Exhibit C-173, as I attempted to explain in my testimony, was to show that the carriers voluntarily a number of years ago preserved in the Northwest the approximately 115 per cent relation, horses to edible livestock; that I wasn't asking for anything new in asking for it now.

Page 14 of the exhibit covers the year 1924.

Page 20 is merely a comparison of the earnings to Sioux City from stations on the Milwaukee in South Dakota with rates and earnings via the other roads in the territories shown. I started out from Sioux City and pursued a northwesterly course through all principal points out to Rapid City. I think other divisions would show a substantially similar result inasmuch as the rates are all based on the 12268 mileage scale.

There are five of the stations west of the Missouri River.

Page 24, the so-called hump in the rates occurs at the state line and merely shows the severe gradation at the eastern boundary of South Dakota. The rates shown east of the Minnesota-South Dakota state line are state rates.

Page 38 of the exhibit is merely to give the commission a bird's eye view of the traffic density of the various divisions in South Dakota and the adjacent space.

[fol. 808] J. H. TEDROW, was thereupon called as a witness, and having duly been sworn, testified as follows:

Direct examination (pro se):

I am transportation commissioner of the Chamber of Commerce of Kansas City, Missouri. Such figures as I

have in my exhibits touching on the agricultural situation are taken from authentic publications with the sources plainly given. Kansas City is an important horse and mule market. Docket 13001 is in this proceeding, brought in behalf of the Kansas City Market.

Exhibit C-175 sets forth the results of my study of the situation of the rates on horses and the economic situation as to horses.

Page 1 of this exhibit on the left hand side shows the receipts of horses and mules at all public stockyards in the United States from 1915 down to 1926, by months. The figures are expressed in thousands.

The principal point about this is to show you the tremendous falling off in receipts of horses and mules at the public stockyards. The high figure was in 1916, 1,478,000. Ten years later, 1926, it was 391,000.

I want to make the point that burros and asses should also be included in any findings of the Interstate Commerce Commission, and the findings not limited to horses and mules. When I say "horses and mules" I include burros and asses.

On the right-hand side of this page is shown receipts [fol. 809] at principal markets from 1900 to 1926. This also shows the tremendous falling off of receipts at the principal markets. The principal markets are shown across the top of the page.

Page 2 of the exhibit charts the receipts of horses and mules at principal markets as shown on page 1.

Page 3 charts the receipts of horses and mules at principal markets as shown on page 1, individually. I want to point out that going back to 1916, the largest market was the St. Louis market; the second-largest market, the Chicago market; the third-largest market, the Kansas City market; while Fort Worth came in fourth. This situation has been turned around in recent years. There has been a decidedly upward trend of receipts at Fort Worth, as indicated. For awhile, for several years, Fort Worth was the second market, St. Louis being first. Now Chicago has fallen off to being in 1926 the fourth market, with Fort Worth third, Kansas City second and St. Louis first.

Page 4 shows the number and value of horses and also mules on farms in the United States as of January 1, for the years 1900 down to 1928. Various periods have been averaged.

Note the tremendous falling off in prices for the period 1914 to 1920 the average price per head of horses was $102.38. In 1928, January 1, the price was $67.07 per head. The same thing is relatively true on mules.

The right-hand side of page 4 shows the same informa-
[fol. 810] tion as to age groups on horses and mules. Taking the year 1928 for horses 2 years old and over, the price was $69.87, and you would have to go back to 1903 or 1904 to get a comparable or a lower price. The same thing is relatively true on mules.

There has been a little upward trend in prices in the last year or two. There are certain blank spaces shown on the right-hand table for 1908 and 1909. We could not secure that information. That X there refers to an X shown on the left-hand side of the page opposite the year 1910, in the line opposite the year 1910.

Page 5 charts the number of head of horses on the farms and the value per head, January 1, through the various years as covered by page 4. And page 6 is a similar chart on mules.

While the number of horses on the farms has declined it seems the number of head of mules holds a fairly steady increase; but the value of both species of animals has declined.

Page 7, on the left-hand side is shown the farm price per head, 15th of month; a weighted average. It continues to show the falling off in value. The right-hand side of page 7 shows the average monthly farm price per head, 15th of month, for the years 1923 to 1928, by states. The information shown for 1928 is as of January 1.

[fol. 811] Page 8 is an outline map of the United States, on which we have put the value per head of horses as of the 15th of the month, 1926. That is an average value, gotten from the 1926 agricultural year book.

I want to call your attention to the fact that in the territory which is concerned or involved in this proceeding, generally speaking, the prices on horses are the lowest of any other place in the United States. Compare the prices in Texas, Louisiana, Oklahoma, Arkansas, Missouri, Kansas and South Dakota with prices elsewhere. The prices in Nebraska and Iowa are on a somewhat higher basis, but still are not as high as the prices are in many other states.

Page 9. On the left-hand side is a statement of exports and prices of horses and mules for the years 1900 down

to date. This shows a falling off of exports, a reduction in the average price.

The right-hand side of page 9 shows horse and mule receipts at the Kansas City market down—from 1912 down to and including 1927, and prices on horses and mules. The prices, as will be seen, are off now from what they formerly were.

Page 10 is self-explanatory and is simply a statement of the receipts of horses and mules at Kansas City from 1912 down to and including 1927, as divided between the various states.

[fol. 812] The most important territory for receipt of horses at Kansas City is Oklahoma, Nebraska, Missouri, Kansas and Colorado, with a considerable number also reaching this market from New Mexico.

At the bottom of the page the total is shown, which shows a steady falling off from the high peak year of 1917, which is 127,000 head down to and through the years 1921, etc., until in 1927 the receipts are 44,000. Though they are higher from the year 1921 on, they are materially less in the years 1920 and back.

On page 11 we have shown various mileage scales on horses and mules carloads. The letters at the top of these columns refer to authorities at the bottom of the sheet which show where we got the scales.

The Texas scale, of course, is the Texas intrastate scale. There was no general Southwestern horse scale applying interstate in the southwest until the advent of the decision in Mr. Pelton's case, which was I. C. C. Docket 12358. I took the Southwestern cattle scale as it was finally revised in 122 I. C. C. 609 and figured what the rates on horses would be if the rates on cattle were 115 per cent of the Southwestern scale.

In the last column on the page I show a column headed, "15 per cent over North Western Cattle." The interstate Commerce Commission in 109 I. C. C. 631 prescribed a cattle [fol. 813] scale to apply in North Western territory, and we took that scale, extended it downward because, as I recall, it started at 1,000 miles—extended it downward at a reasonable progression and made a scale of horse rates 115 per cent thereof.

Those X's on the scale with lines drawn through the scale at various points indicate where the scale proper ends.

Beyond that point the scales were extended on the progression existing in the last 100 miles before the end.

The livestock rates in the southeast were not actually passed upon by the commission. The various parties got together and agreed on a scale, and the Interstate Commerce Commission allowed it to go into effect. The scale is the cattle scale adjusted for horses and mules in line with the Hudson Mule Case as authorized in that report. Column E is 115 per cent of the Southwestern cattle scale. 122 I. C. C. 609 only fixed the rates up to 600 miles. Beyond that we used the present livestock scale. The rates beyond 600 miles stood; they were approved by the commission.

On page 12 I have shown various scales, and the purpose of it is to make a comparison in the progression of horse scales, and also I show "Kansas City proposed Scale A", and, "Kansas City proposed Scale B." Scale A and Scale B we are putting up as our suggestions for maximum rates on horses; Scale B to apply in the western trunk-line territory, and Scale A to apply in the Southwest.

[fol. 814] Horses, when transported by railroad, are subject to the federal and the state laws to stop to feed, water and rest at various intervals, and they have to be stopped at points ranging anywhere from 300 to 400 and 450 miles apart, to stop to feed, water and rest.

These scales I have constructed on a uniform progression of 6 cents per hundred miles right straight through. I can't see that there is any reason in constructing a livestock scale or a horse scale for a difference charge for the transportation of horses from 500 to 800 miles, or from 700 to 800 miles, than from 300 to 400 miles, or 100 to 200 miles; that the progression should be uniform; and that the plan previously followed so many times in making scales when the progression tapers off on the longer distances is all wrong. The recent livestock scales have been made on livestock on a constant progression. The North Western case I have cited you on the previous page, 109 I. C. C. 631, and also the Eastern livestock scale are examples.

Kansas is included in Scale B, western trunk-line territory.

Now, on page 13 I have charted these scales. The Kansas City proposed scale you will see is lower for the shorter

distances than the other scales, but climbs up with those scales for the higher distances. The Texas scale begins to flatten off at 775 miles and continues constant. I desire [fol. 815] to withdraw the line showing the proposed examiner's scale.

Page 14 is simply a statement of the progression, from which we will eliminate Column 7, which is the Examiner's proposed scale; and it shows very ragged progressions on most all of these scales except our proposal.

Page 15 shows a statement of present rates on horses and mules from various Missouri points to Kansas City, miles and routes, and what the rates would be under the various scales. I will strike from that exhibit the examiner's proposed scale; also the increases that would result from the examiner's proposed scale. Otherwise, the exhibit speaks for itself.

The same description will apply to comparison in rates shown on page 16, which shows the same information from various Kansas points.

The rates shown under "Proposed 93 I. C. C. 498" are the rates proposed in the horse and mule rates in the Southwest, 1924, Docket 12358, by the Interstate Commerce Commission.

I recall now, Mr. Examiner, why I used the word "Proposed", instead of the word "Prescribed." I applied these rates from a lot of the territory where the rates were not absolutely prescribed.

The same information as shown on page 15 is shown on pages 16 and 17 as to Kansas.

[fol. 816] Page 18 shows rates from Colorado points, miles, and routes, and present rates, what the rates would be under the Southwestern scale, under various scales, and under the Kansas City scales.

On pages 19 to 21 we show rates and miles, and distances from various Kansas and Colorado points on the present basis to Kansas City, St. Louis and Chicago; what rates would be on the prescribed basis on the Southwestern Horse and Mule case, what the rates would be on the Kansas City proposed scale, both A and B, although we are proposing Scale B for this territory.

We show what the difference in rates would be per carload, Chicago and St. Louis over Kansas City, from these points, as shown in the columns to the right, and what the differences would be under the Kansas City scales pro-

posed. The Kansas City scales proposed would give us a better adjustment than would result under the decision of the commission in the Southwestern Horse and Mule case, give us a better adjustment and a better chance to do business here.

Take for instance, Emporia, Kas. At the present time take the fourth column from the right. Kansas City is $55 per car under St. Louis and $81.50 per car under Chicago. It is true that the Southwestern scale as prescribed wouldn't make much change in that, and it is true that the Kansas City scales, A and B, which we are proposing, would shrink those distances.

[fol. 817] But go down to Hugo, Colo. You will see that the situation there, that we will have a better adjustment under our scales than we would have under the prescribed cases. Hugo is the last station there. The situation as it exists now, the spreads are spotted. There will be one thing from one territory and something else from another territory. There is nothing uniform about them at all. Now, if we had our scales that we are prescribing, we would have a more or less uniform scale all the way through. It would reduce them in some places and improve them in other places.

Take Rocky Ford, Colo., our present spreads under Chicago and St. Louis would be reduced by the prescribed scales. But our situation would be improved either by Scale A or Scale B, which we are proposing.

I mean that it would be better, under our proposals, than it would be under an adjustment of rates such as is prescribed by the commission in the Southwestern Horse and Mule case. I don't mean by that to say that our market situation as a whole is going to improve over what we have got now.

Take Rocky Ford, Colo., for instance, under the Southwestern scale we would be $27.50 per car under St. Louis and $43.50 under Chicago.

Under the scale we propose, Scale B, we would be $38 under St. Louis and $51 under Chicago.

[fol. 818] We are not going to improve our situation in every place by these scales that I am proposing, but I am saying that it would result in a better situation than the scale prescribed by the commission in the Southwestern Horse and Mule case. I am claiming that the scales we are submitting are built on better principles, sounder princi-

ples, and would go farther in doing justice to all concerned than the scale prescribed in the Southwestern Horse and Mule case.

If we are going to have an entire revision of the horse rates on a mileage scale, our scales are the ones to be used, rather than the ones prescribed in the Southwestern Horse case.

We want a more uniform differential under St. Louis than exists in the present rates for those prescribed, if there is to be an entire readjustment of the horse rates. So far as we are concerned, we are not seeking any readjustment in the rates on horses from Colorado, and Kansas and Nebraska, to the territory here. That has only been brought out by the complaints of Fort Worth, in which they allege discrimination and prejudice because the rates from Kansas and Nebraska and Colorado are lower than the scale applying into Fort Worth, as you will recall.

Page 22 and succeeding pages are introduced here solely to show the relative difference in rates as proposed by us with those prescribed by the Commission in 12358 and the [fol. 819] rates that are now in effect to these various destinations; that showing is made in view of the issues in the various cases being reheard at this time. The scale proposed by us will give a fairer adjustment than the rate basis now in effect or the rate basis prescribed by the commission in the Southwestern Horse and Mule case.

Let's take Limon, Colo., to Altanta, Ga., in the first block, the mileage via Kansas City and via St. Louis on horses originating at Limon and going to Atlanta is the same, 1,456 miles. The rate via Kansas City is $1.28½ cents and via St. Louis, $1.32. Under the proposed rates in the Southwest Horse and Mule case, the rate via Kansas City would be $1.53½, which is 12 cents higher than the rate via St. Louis, although the mileage is the same, and the same service would be rendered on both shipments. My plan under Kansas City scale would make an equality of rates, there would be only ½ cent difference between the two rates. The illustration, Limon, Colo., to Pittsburgh, Pa., the rates and distances via Kansas City and St. Louis are the same; Under the proposed scale in the Southwest Horse case Kansas City basis would be 13 cents higher than the St. Louis basis, with the same service and mileage. My scale

would make the Kansas City rate only 3 cents higher than the rate via St. Louis.

On a shipment from Limon, Colo., to Pittsburgh, via Kansas City, and handled at Kansas City, and moving to [fol. 820] Pittsburgh the rate from Kansas City to Pittsburgh would be made up by the scale to the Mississippi River and the rate beyond.

If I am figuring a rate on horses from Limon, Colo., to Pittsburgh, via Kansas City, I assume first that this particular mileage scale is in effect in this territory. I figure the rate from Limon to Kansas City, first, and then I figure what the rate would be from Kansas City to Pittsburgh, which is made up of the rate, Kansas City to the Mississippi River under this scale, see, and the rate from the Mississippi River to Pittsburgh.

On pages 23, 24, and 25 of the exhibit I have taken various points of origin in Kansas and figured the mileage and rates on horses via various markets to destination points in the South, such as Waco, Tex., Little Rock, Ark., and Alexandria, La. I shall eliminate reference to the proposed examiner's scale on all these sheets. Without discussing these sheets in detail, they show that the scales that I have proposed would be fairer to Kansas City and all markets, Wichita, Memphis, Fort Worth and St. Louis; put them all on an equality so far as their location is concerned.

On page 26 I show a comparison of various horse scales with the various cattle scales, and the relationship to each. For instance, take Column D, which shows the percentage relationship of the Southwestern horse scale prescribed by the Interstate Commerce Commission in the Southwestern [fol. 821] Horse Case with the Southwestern cattle scale. It runs from 122.9 per cent up to as high as 144 per cent. The Texas horse scale, which is shown in Column E, will run any way from 100 per cent of the cattle rates to as high as 164 per cent of the cattle rates.

In Column H we show the percentage relationship of the Southeastern horse scale to the Southeastern cattle scale, which runs from 113.6 to 178.5 per cent.

Eliminate Columns K and N. In the last two columns I show the percentage relationships of the scales we propose to the Northwest cattle scale. They speak for themselves.

Column A the Southwest cattle scale is the two scales up to 500 miles, and joint and single beyond. The per-

centage relationships in Column D would not be changed very much if you used a composite of the single and joint-line cattle scale. Column B does not reflect the rates in effect in publications from 100 miles back; but it does from 100 miles on.

Page 27 is a comparison of railroad cost figures in the Western Trunk Line territory with the Southwestern territory. They largely speak for themselves. The Western Trunk Line territory is in a better situation than the Southwestern territory. The percentage relationship of Western Trunk Line territory, or these roads in Western Trunk Line territory, to the roads shown in Southwestern territory, is as follows: These figures are not on the exhibit: [fol. 822] Gross ton-miles, Western Trunk Line territory to Southwestern territory, 173.1 per cent. Total operating revenues, W. T. L. to Southwest, 156.9 percent. Total operating expenses, W. T. L. to Southwest, 154.8. Operating revenue per thousand gross ton-miles, W. T. L. to Southwest, 90.7 per cent. Operating expenses per gross ton-mile, W. T. L. to Southwest, 89.5 per cent.

Pages 28 and 29 of the exhibit show the routings used and the tariff authority. This exhibit also portrays in a general way the St. Joseph situation. The rates to St. Joseph, which is 60 miles north of Kansas City on the Missouri River, are generally the same inbound and outbound as the rates to and from Kansas City: and in adjusting rates in this docket, we want to ask that the rates to St. Joseph, to and from St. Joseph and Kansas City, be grouped on an average mileage basis, to and from St. Joseph and Kansas City. That is, generally speaking, the same as exists in connection with livestock rates generally. Our rates inbound and outbound are the same except to and from a small local territory within a 75-mile radius of the two points.

We asked that St. Joseph and Kansas City be grouped on the basis of the average of their mileage. The greater amount of tonnage moving to and from Kansas City, balanced on a weighted average, would perhaps bring St. Joseph nearer the Kansas City rate than an average of [fol. 823] the mileage would and would bring our rates down. That would not be on traffic from Nebraska.

Throughout this exhibit I have only used the Southern Nebraska scale and North Missouri scale. So far as rates

from the Nebraska territory to Kansas City we would be very happy to be left alone.

The greater amount of tonnage moving to and from Kansas City, balanced on a weighted average, would perhaps bring St. Joseph nearer to the Kansas City rate than an average of the mileage would.

In my Exhibit C-175, page 27 I used the figures of gross-ton-miles, on the basis of service. A difference of greater mileage in one group than another would not affect the total operating expenses.

Exhibit C-175, Witness Tedrow, was received in evidence.)

Cross-examination.

By Mr. Outlaw:

The Witness: The receipts at public markets, shown on page 1 of my exhibit are very high for 1915 to 1919, and fall rather sharply off thereafter. The high point was due to war activity and after peace was restored the shipment and production of horses suffered. Another reason for the decline in receipts at the markets was due to motorization of city deliveries and motorization on the farms. [fol. 824] The trend is toward motorization, although I do not think it is as rapid now as it was two or three years ago. The high figures shown in St. Louis were due rather to the influence of war buying and handling than any competitive condition of St. Louis market as against any other market.

Q. The lack of the demand for the horses would be reflected in the value, too, wouldn't it?

A. Certainly. There is not the demand for horses now that there was.

I am suggesting a scale as a basis, and the commission can make it single or joint, following what they do in the livestock case. This case will fit in with the Western Livestock case, and the decision in this case will hinge largely on that, because transportation characteristics on horses and mules are similar to those of livestock, generally.

The figures on pages 4 and 9 of the exhibit show the falling off in the prices and value of horses. I got the

[fol. 825] figures out of the Agricultural Year Book of the United States Government. I think the breaking line between the Western Trunk Line and the Southwestern scales should be at the Oklahoma-Kansas state line and that the commission erred in putting the state of Kansas in with the Southwestern states. In the case of Texas movements, if we are going to have an entire readjustment on horse rates all over this country, and we are going to take a scale like was prescribed by the commission in Docket 12358, it certainly ought to apply intrastate within Texas.

In the exhibit South Dakota 12268 scale is the single line scale; no arbitraries are shown.

Page 27 of the exhibit shows gross ton-miles handled includes all the transcontinental system.

To arrive at the rate of progression in my proposed scale I looked at all the scales. I saw in some places they were lower than 6 cents and in others higher than 6 cents, so I took six cents as a happy medium.

By Exam. Carney:

Q. There was some testimony here by a previous wit- [fol. 826] ness, as I recollect it, that they were satisfied to have the rates on horses and mules adjusted on the basis of the rates found by the Commission in Docket 17000, Part 9.

A. Yes, sir.

Q. Assume that the 17000, Part 9, eliminates all the discrimination that's been alleged in these complaints by reason of the adjustment of the cattle rates. Have you any fault to find with a proposal of that kind, that the rates on horses and mules be made 15 per cent over the cattle rates?

A. No, sir.

W. H. Fitzpatrick, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination (pro se):

I am manager of the traffic bureau, Chamber of Commerce, St. Joseph, Missouri, appearing for the St. Joseph horse and mule market and the St. Joseph Stock Yards Company.

I adopt the testimony, direct and answers on cross-examination, of Mr. J. H. Tedrow for the St. Joseph market, also, his Exhibit C-175. The rates into and out of the Kansas City market, as shown on pages 15 to 25 of his exhibit, C-175, likewise apply into and out of the St. Joseph market.

The receipts of horses and mules at St. Joseph, Mo., are shown on page 1 of Mr. Tedrow's Exhibit C-175 up to and including the year 1926. The year 1927 showed receipts of about 8,000, a decline under 1926 and 1925, but the first [fol. 827] 9 months of 1928 indicate that we will increase slightly in our receipts to about 10,000 head.

Now, horses and mules are just another species of livestock, and in the livestock case the position of these two markets was that they should be grouped, inbound and outbound, the rates based on the average mileage. That is our position in this case. In the Nebraska livestock case, in which the commission set 115 per cent of the cattle scale as the horse and mule scale, they provided that the two markets could be given equal rates on average mileages, which was done by the railroads, the rates being based on the mileage at Weston, Missouri, thirty miles south of St. Joseph.

With respect to the grouping, as to whether the rates would be satisfactory on the basis of the average mileage or the average of the rates, we would prefer the lowest rates, no matter which way it is figured.

A. M. Corp, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination (pro se):

I am transportation commissioner of the Wichita Chamber of Commerce, appearing for and testifying in behalf of the Wichita Horse and Mule Commission Company, the C. B. Team Mule Company and the Wichita Chamber of Commerce of Wichita, Kan. The most important market for horses and mules is in the Southeast and it is important that the rates for that territory be on a reason-[fol. 828] able basis.

I introduce Exhibit C-176 and direct the attention of the commission to some of the disparities in the present ad-

justment. It is necessary to show for comparative purposes the rates applicable from Kansas City to destinations in the Southeast to which the present proportional rate from Wichita to Memphis would apply.

Page 1 shows a comparison of the rates applicable from Kansas City, Mo., to certain Southeast points and the rates from Wichita to the same destinations; the excess in the distance, Wichita over Kansas City; the excess of the freight charges per car, Wichita over Kansas City; also the car-mile earnings, and the per cent of the car-mile earnings from Wichita is of the car-mile earnings from Kansas City. It also shows the spread by percentage between the rates from Kansas City and the rates from Wichita.

Page 2. I want to make a correction there. The words "To Wichita, Kas.," should be changed to "From Wichita, Kas.," and the word "From" just above "Memphis" should be changed to read "To" Memphis.

On this page we have shown the flat rate from Wichita to Memphis, also the proportional rate from Wichita to Memphis. The proportional rate from Wichita to Memphis is 77.5 per cent of the flat 12358 rate, while from Kansas City the proportional rate bears a relationship of 68.6 per [fol. 829] cent of the flat rate, Kansas City to Memphis.

On the basis of the Kansas City relationship, assuming that $91.50 is proper from Kansas City to Memphis, the proportional rate from Wichita would be $97.82 instead of $110.50; or if the $110.50 from Wichita to Memphis is proper, then, based on that relationship of $77.5, the Kansas City rate should be $103.40. The proportional rate applies to Memphis and the same rate beyond there. At this time there is a spread of $19 per car, Wichita over Kansas City, while if the rates bore the same relationship to the flat rate as applied from Kansas City to spread would be $6.32. The rates on page 1 are per car, $164.55. The rates in the tariff are named in dollars and cents per car beyond Memphis and in rates per hundred pounds to Memphis, using a minimum rate of 23,000 pounds.

Page No. 3 shows the rates prescribed by the Commission in Docket 12358 and the specific rate as published by the carriers, and shows that Kansas City and Wichita are on the same basis up to these west-bank Mississippi River crossings.

Page No. 4 shows the differentials prescribed by the Commission in Docket 12358 for application in connection with traffic going to east-bank points, these arbitraries being added to the west-bank points to arrive at rates to the east-bank points.

Page No. 5 shows the relationship of the rates from [fol. 830] Wichita and Kansas City and also Oklahoma City and Fort Worth to east-bank points, made up on the basis of the 12358 scale to the west-bank points plus the arbitraries shown on page 4.

Page 6 shows a relationship of the specific 13535 first-class rate prescribed by the Commission in Docket 13535. That is, it shows the rate that would apply under the strict mileage scale and the rates that have actually been published to Wichita, Oklahoma City, and Fort Worth. The rates to Kansas City were not involved so that I have shown there the 13535 mileage scale and the specific rate which applies from Memphis to Kansas City. This shows that to these west-bank points the rates from Kansas City and from Wichita are very comparable.

On page 7 we show the rates to Memphis based on the 13535 scale plus the bridge charge prescribed in that case. The rates from Memphis to Kansas City have been based on the west-bank point prescribed by the Commission plus the bridge charge from Memphis. Now, on all of these exhibits where I have shown the mileage to Kansas City or between points on the Mississippi River and Kansas City, that is the Kansas City mileage and does not represent the average mileage to the Kansas City Group, nor the rate from Wichita represent the rate from the Wichita group. It shows the mileage from Wichita proper.

Page 8 shows the percentage relation of the Wichita to west-bank Mississippi River points distance to the Kansas [fol. 831] City distance to the same destinations, and it will be observed that the relationship at Memphis is 117.1 per cent. Now, all traffic does not necessarily have to move through Wichita or through Memphis, and if we cross on the lower Mississippi River crossings—that is, below Bridge junction—the percentage Wichita distance is of the Kansas City distance is reduced. The average Wichita distance to these four points is 103.1 per cent of the Kansas City distance.

Page 9 and 10 show the routing used in connection with the preceding pages.

Prior pages dispose of the showing as to the existing adjustment, and we will now take up our proposal which is supported by a study of existing livestock scale.

In 23 I. C. C. 656, the Commission fixed a reasonable scale of livestock rates commonly referred to as the 1716 scale for interstate application on livestock from points in New Mexico, Texas, and Oklahoma to Fort Worth, Oklahoma City, and Wichita. Later, in Shreveport, Texas Cattle, Lignite, Wood and Tan Bark, 48 I. C. C. 283, a similar scale was prescribed for application in Texas, and between Shreveport and Texas points the rates in that scale were in effect less than 60 days prior to the effectiveness of General Order No. 28. Under that order the rates provided by these scales were increased 25 per cent, subject to a maximum increase of 7 cents per hundred weight.

Subsequently in 1919 the Director General canceled the [fol. 832] rates based on the 1716 scale and published in lieu thereof and practically throughout the Southwest rates based on the scale prescribed in the last-cited case, except for distances in excess of 780 miles the scale was graded up instead of blanketed. In the territory where the 1716 scale applied, the revision for distances up to 380 miles resulted in increase of from .5 to 1.5 cents for distance over 380 miles, and less than 410 miles it made no change, while for distances over 410 miles it resulted in reductions of .5 to 4 cents.

After federal control there came the general increases and reductions which further increased the disparities in favor of the long-haul rates.

When the Shreveport scale was adopted by the Director General, it was known as the 2797 scale, the number being a freight rate authority, so that the scale shown on page 11 is the I. & S. 958 scale, increased as per General Order No. 28 or 25 per cent, subject to a maximum of 7 cents per hundredweight, and reduced 10 per cent on the short hauls and 20 per cent on the long hauls.

I direct your attention to the blanket rate of 50 cents for distances, 600 to 750 miles. This was the result of the manner in which the increases and reductions were applied. This blanket adjustment was wrong, and the long-haul and short-haul rates were not properly related.

Page 12 shows the result of the Commission's decision [fol. 833] in Docket 15686, and it will be observed that the 50-cent blanket was reduced and applied for distances, 630 miles to 750 miles, and that the rates for hauls up to 630 miles were reduced. It is our contention that the increases and reductions should have applied to all distances regardless of a maximum increase.

Q. (By Mr. Outlaw) Just a minute. Is that correct? Were there any rates at all under the 600-mile block touched in the decision in Docket 15686? The decision started with a 600-mile block.

The Witness: The rates on page 11 are I. & S. 958 increased scale twenty-five per cent with a maximum of 7 cents out for the distance of the scale; instead of being blanketed beyond, they were graded up. The rates shown on page 12 are the rates actually prescribed by the commission in the cases referred to.

The 2797 scale is the I. & S. 958 scale increased twenty-five per cent, subject to a maximum of 7 cents per hundred pounds. Then it was the 2797 scale.

Page 13 shows the I. & S. 958 scale increased twenty-five per cent all distances, 35 per cent all distances, and reduced 20 per cent all distances, it being our contention that the short haul should receive the same reduction as the long hauls.

The scale on this page is made from the same original scale as the scale shown on page 11, the only difference being in the manner in which the increases and reductions were applied. At this point it should be remembered that prior to the publication of the 2797 scale, shown on page [fol. 834] 11 the Commission had prescribed the 1716 scale for application in the Southwest.

Page 14 is the 1716 scale as prescribed by the Commission brought down to date by increasing that scale twenty-five per cent for all distances, 35 per cent for all distances, and reduced 20 per cent for all distances. The twenty per cent reduction was applied by the carriers to all rates in excess of fifty cents but in this scale we have applied it to all distances.

Page 15 is a revised fat cattle scale, based upon the application of the 25 per cent increase, the 35 per cent increase, and the 20 per cent reduction for all distances. Now, in applying that formula to the 1716 scale we found

that a proper rate of progression would not result, so that in the study of all these scales we found that we could not stay right on the 1716 line; and I will explain that in connection with the graph that is the last page of the exhibit. Also, that in our revised fat cattle scale we have used the various scales shown in the heading of this exhibit.

We have used the 1716 scale up to a distance of 450 miles; increased twenty-five and thirty-five per cent and reduced twenty per cent. Up to 450 miles we have applied the page 14 formula to the original 1716 scale and then we used the I. & S. 958 scale for distances in excess of 450 and including 950 miles, brought down to date in the same man- [fol. 835] ner. From 950 miles on we used the northwestern cattle scale, 109 I. C. C. 631.

On page 16 we show the 12358, 93 I. C. C. 479, scale, which was prescribed by the Commission to apply from Kansas City and Wichita to Memphis and throughout the Southwest. The Commission has said that nothing higher than Class C rates should apply on horses and mules, and on page 17 we have shown the Class C 13635 scale, and it will be observed that it is less than the 12358 scale single-line scale and applies for both joint and single-line application.

Page 18 is the revised cattle scale shown on Page 15 the exhibit, increased fifteen per cent.

Page No. 20 is an exhibit or statement showing the progression of the various scales, and also show- the progression of the proposed scale. Page 21 is a graph on which we have shown eight scales including the proposed scale.

On page 21 it will be observed that the 2797 scale which is shown on the graph as a dash line runs out at 600 miles. This is brought about by the 2797 scale becoming the 15686 scale beyond that distance. The 50 cent blanket, to which I have before referred, is shown by the line of the 2797 scale and the 15686 line, which is a dash-dot-dash line, and extends from 575 miles to 750 miles.

The decision in Docket 15686 of the Commission, it will be observed, reduced this blanket to apply from dstances, [fol. 836] 605 miles to 750 miles. The revised single-line fat cattle scale at approximately 665 miles crosses the 2797-15686 line at exactly the center of the original 50-cent blanket.

This proposed scale brings about an equalization of the long-and-short-haul rate. The 12358 scale is the higher

scale on the graph designated by a long dash-short dash-long dash, and is in excess of the Class C, Column 30, prescribed by the Commission Docket 13535, which is shown on the graph by a long dash-dot-X-dash line. The proposed horse and mule scale, which is 115 per cent of the revised cattle scale, is shown on the graph with circles.

The rate of progression for the proposed horse and mule scale is shown on the graph at the bottom of the page. This scale is proposed as a scale from which the Commission could prescribe a scale so as to bring about a proper relationship as between markets.

And, considering that the 13535, Class C, rates, Column 30, are under the 12358 scale, it proves to our mind that the 12358 scale is too high, and we ask that whatever scale is prescribed for application within the Southwest be made uniform from all markets to the Mississippi River crossings on traffic going into the Southeast. We advocate that same scale for application in the Southwest generally. The general class rates to the Southwest are on the 13535 scale. If the flat rate from Wichita to Memphis, based on the distance, is 106.9 per cent of the rate from Kansas City to [fol. 837] Memphis, we would not want to pay 106.9 per cent of the Kansas City rate going into Southwest. The Interstate Commerce Commission in Docket 13535 prescribed from Bridge Junction, which is just across the river from Memphis, the same mileage scale to apply to Wichita as applied to Kansas City; but going to Fort Worth they prescribed the scale and gave us the benefit of our distance, and that's what we are asking for in this case.

(Exhibit C-177, Witness Corp, was received in evidence.)

In connection with the relationship of the Wichita-Memphis flat rate to the Kansas City-Memphis flat rate, I want to say that the exact percentage relationship is 106.9 per cent. That relationship we are not complaining about, but we do complain of the relationship of the Wichita-Memphis proportional rate to the Kansas City-Memphis proportional rate, that percentage relationship being 120.8 per cent.

We think that if the relationship of 106.9 per cent is proper in connection with the flat rates that the same percentage relationship should be observed in connection with the proportional rates from Wichita and Kansas City to Memphis.

Cross-examination.

By Mr. Outlaw:

In constructing the basic livestock scale to use in arriving at a horse and mule scale, we assumed that the commission, [fol. 838] at the time the 1716 scale was prescribed, prescribed a reasonable maximum scale for application to Oklahoma City, Wichita and Fort Worth. We took that as a foundation from which to build a scale, adding thereto the increases and reductions as stated in the exhibit. The principal application of the scale was south of Kansas and between Oklahoma and Texas. Kansas being in Western Trunk Line territory, we think should have a lower scale than intrastate in Texas. We have shown the 1716 scale because it was prescribed by the Commission for application in that territory, and we are showing here what would have been the result if that scale had been continued in effect instead of being arbitrarily set aside by the director general in I. & S. 958. If it had not been set aside we would [fol. 839] have had the 1716 scale in effect today, increased thirty-five per cent and reduced twenty and ten. The Commission says that the 1716 scale was too high for the long-hauls and we used the northwestern scale on out and find that that gives us a proper progression. We assumed that the Commission had prescribed a reasonable scale there and extended our proposed scale on as was the northwestern scale. If it is reasonable for the northwest it would certainly be reasonable for the southwest. Our scale compares very favorably, I think, with the 1716 scale. The scale on page 21 is the one we want.

We want a lower rate than prescribed by the Commission for application for the future from Wichita. I think that this scale should apply within the territory in which the Commission prescribed the 13535 rates and should apply from Kansas City to other Missouri River markets to the Mississippi River and to the Southwest. Until such time as through rates are prescribed into the Southeast, we believe that proportional rates to Memphis should be continued in effect somewhat lower than the flat local into Memphis, on traffic destined beyond, than the scale applying to Memphis flat. If we had proportional rates into Memphis I would see no objection to proportional rate applying from the Southwest into other basic points bear-

ing the same relationship. In connection with Mr. Pelton's Exhibit C-169, the rate of return shown there is based on one hundred per cent of the carriers' book value and not based on the Commission's final values. It shows a material [fol. 840] difference there. If there were a through mileage scale existing from Southwestern territory through to southeastern territory there would be no need of proportional rates to or from Memphis.

The commission prescribed the 1716 scale for application in the territory in which we are interested. The Director General arbitrarily set them aside and put in the I. & S. 958 scale, so we took the scale that the Commission had actually prescribed and which was taken out without any authority of the Commission and are proposing the scale here based on the 1716 scale revised.

The commission in the 12358 decision found that that scale would be a reasonable maximum scale for the future. I think that this scale should apply within the territory in which the Commission prescribed the 13535 rates and should also apply from Kansas City and other Missouri River markets to the Mississippi River and to the Southwest.

We want it to apply to Memphis, but until such time as through rates are prescribed into the Southeast, we believe that proportional rates to Memphis should be continued in effect somewhat lower than the flat local into Memphis.

I don't think, that rates going into the Southeast should be based on the through combination of locals.

The rate of return shown here on this Exhibit C-169 is based on 100 per cent of the carriers' book value and not based on the Commission's final values, such figures hav- [fol. 841] ing been introduced in Ex Parte 87. It shows a material difference there.

It is our position that the present rates on horses and mules are high.

Complainant's case completed.

[fol. 842] Defendant's Testimony

S. C. Inkley, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Outlaw:

I am executive clerk in the freight department of the St. Louis-San Francisco Railway Company, St. Louis, Missouri.

The Southwestern lines have considered the question of rates on horses and mules in Southwestern territory, and it was the opinion of the lines that in order to remove the undue prejudice, discrimination and complaints of the various market points in Southwestern territory that the solution of the problem was the application of a uniform scale for application on horses and mules both into and out of the market points.

The scale shown on Exhibit C-177 is the scale adopted by the Southwestern lines for application on horses and mules. This scale is to apply between points in Kansas and the Mississippi River cities and St. Louis and the Mississippi River crossings south of St. Louis. The scale is to apply between points in Southern Missouri. By that is meant the part of Missouri lying south of the Rock Island Line operating between St. Louis and Kansas City. The scale is to apply between points in Oklahoma, Arkansas, Louisiana, and Texas, Texas differential territory, and New Mexico. The Southwestern carriers have also a scale or a basis to propose in connection with rates on horses and mules from Colorado into Southwestern territory, includ-
[fol. 843] ing Texas differential territory and New Mexico.

In the application of the scale set forth on Exhibit No. C-177 to points in Texas differential territory, the carriers are proposing in addition to the base scale the application of differentials set forth by the Commission in its decision in the Consolidated Southwestern cases.

This scale will apply generally throughout the territory which I have described. In addition to the base scale, we are proposing the application of differentials for the haul in Texas differential territory and in New Mexico. The basis for the rates from Colorado into Southwestern territory will be explained fully by the witness to follow me.

It is proposed that in determining the distances under our proposed scale the formula to be applied will be the same as that set forth by the Commission in its report in Docket 13535; that is, the distances are to be computed by

any number of lines, and the shortest distance via junction points where track connections exist are to be used. In that connection, in Docket 12358 the Commission prescribed both a single and joint-line scale, and in determining the joint-line rates the distances were computed via not to exceed three lines of railroad.

On Exhibit No. C-178, Mr. Outlaw, I have set forth the carriers' proposed base scale and the rates prescribed by the Commission in Docket 12358 and also the carriers' pro-[fol. 844] posal in Docket 12358.

It will be noted that the carriers' proposal in this case is substantially on the same basis as that proposed by the carriers in Docket 12358. We are still of the opinion that our original proposal in Docket 12358 was proper and is proper for application — horses and mules except as changed by the proposal of the carriers' in this case, which is very slight.

On Exhibit C-178 "Proposal" under I. C. C. Docket 12358 refers to the original proposal made by the carriers in the former hearing in that docket and the column headed "Proposed" immediately to the right of the mileage, is the proposal that you are making at this time. The carriers' proposal, as I understand, in 12358 was the 9702 class B, and was a single and joint line rate scale. There was a question of extending the scale beyond 600 miles but there was some objection to that and is covered by the Commission's report on page 8 as follows: "The carriers, if their scale should be extended for the greater distances, they would favor a rate of progression of 2 cents for each additional 25 miles up to 1,000. Lessened by the 1922 reductions, complainants also for such distances name rate progressions in excess of 4 cents for each additional hundred miles."

Exhibit No. C-179 is a statement setting forth the movement of horses and mules over the Frisco System lines for the period, 1920 to 1926, inclusive.

Exhibit No. 180 is a statement setting forth the empty [fol. 845] versus the loaded mileage of the various classes of equipment. The study was made for the period or month of October, 1926, for 35 Western roads.

It shows the total of stock car equipment is 83.12 per cent of the loaded haul. The single-deck stock car equipment is 79.97 per cent loaded, or empty of the loaded haul.

The percentage of the other classes of equipment are also shown on this exhibit.

This exhibit should be considered in connection with like comparisons shown on other commodities moving in the classes of equipment where the percentage, empty of loaded haul, is considerably less than that of stock car equipment. This is for 35 Western Lines, which are shown on page 2 of the exhibit.

That information is obtained from Exhibit No. 310, page 17, of Mr. Wettling's exhibit in Docket 17000, Part 9. Exhibit No. C-181 is a statement showing the empty versus loaded movement of various classes of equipment over the Frisco System for the years 1926 and 1927. It will be noted that the stock car equipment for the year 1927, the empty movement was 93.48 per cent of the loaded.

For the year 1926, the stock car empty movement, percentage of the loaded, was 93.86.

On Exhibit No. C-182 I have set forth a comparison of rates on horses and mules showing both the present 12358 [fol. 846] basis and the carriers' proposal in this case. By 12358 basis, I mean the scale prescribed by the Commission in Docket 12358.

On pages 3 to 9 I have shown the car earnings on various other commodities; and on page No. 10 I have set forth the authority for the average loadings used in determining the per-car revenue.

Exhibit No. C-183 is a statment setting forth the car earnings on horses and mules both under the 12358 prescribed basis and the carriers' proposal in this case; and on pages 3 to 7 I have shown the car earnings on other commodities and the percentage the car earnings on other commodities are of the earnings on horses and mules proposed by the carriers in this case.

The only commodity on which the carriers' revenue per car on horses and mules proposed in this case is less than on the other commodity is as shown on page 4, column 4, fertilizer. The fertilizer rates net the carrier's revenue approximately 78 per cent of what the carriers are proposing herein on horses.

On page 5 the carriers' rates net them a return on potatoes approximately 90 per cent of what we are proposing herein on horses.

The brick rates, as set forth on page 7, net the carriers approximately 80 per cent of what we are proposing on

horses. The other commodities shown on the exhibit net the carriers greater revenue return than we are proposing [fol. 847] in this case. My attention has been called to the decimal in these percentage columns; that is, under Column A. The decimals should be eliminated in every instance. For instance, on page 3, beverages, it shows "1.31". Eliminate the decimal point and it will provide 131 per cent of the horse and mule proposed revenue, and the other instances are the same.

Exhibit No. C-184 is an exhibit similar to Exhibit No. C-183 and shows the percentages the various commodities net the carriers on a per-car basis of the proposed horse and mule rates. The comments in connection with the decimal point will also apply in connection with this exhibit.

It will be noted on page 3 of this exhibit that the brick rates net the carriers a revenue per car of approximately 75 per cent of what we are proposing on horses and mules. Those brick rates were set by the Interstate Commerce Commission, 14617 scale. On Exhibit C-183 the brick rates shown there were prescribed by the Commission in Docket 16124, for application from Fort Smith, Arkansas to points in the Southeast.

On page 4 I have set forth a percentage comparison of rates on cement versus rates under our proposed livestock scale. It will be noted that the carriers receive approximately 90 per cent on cement of what we are proposing on horses and mules.

On sand and gravel, the sand and gravel scale is that fixed by the Commission in Docket 9702 on hauls from 250 miles to 600 miles, which net the carriers approximately 78 per cent. And that is the percentage approximately of [fol. 848] the entire scale. That is, the carriers receive on sand and gravel approximately 78 per cent of what we are proposing on horses and mules. The same is true of the Commission's scale on salt, fixed in I. & S. Docket 2414 for application from Kansas into the Southwestern territory.

The cement rates are about 95 per cent of the horse and mule rates. Exhibit No. C-185 sets forth the comparison of the present rates on horses and mules from representative Oklahoma points to St. Louis, Memphis, and New Orleans, La.; also, the 13535 Class A rate.

It will be seen that the present 12358 scale is approximately the same as that fixed by the Commission in Docket 13535 for application on Class B.

Our scale of rates shown on Exhibit C-177 bears the relationship of 45 per cent to the Class rate prescribed by the Commission in Docket 13535 and we propose the application of the groupings to the gateways and the river crossings only. Horses and mules are not given a rating in western classification but are carried in exceptions and are given the rating of Class A. In so far as the proposals cover Louisiana, I mean Louisiana west of the Mississippi River.

Cross-examination.

By Mr. Tedrow:

The purpose of our Exhibit 183 is to show a comparison of our proposed rates on horses with the general run of commodity rates throughout the Southwest, fixed by the Commission. We do not think a rate on horses and mules [fol. 849] which nets the carriers a certain per car revenue which compares with the brick rate by eighty-one per cent of the horse and mule proposed revenue is unreasonably high, considering the loading and the number of cars of brick handled, and the value and so forth. We made a study of the rates on commodities generally throughout the territory. Page 5 of this Exhibit C-183 shows that the 300 miles the rates on canned goods yield a carload earning 181 per cent of the carload earning under our proposed horse scale and we consider that the proper relationship. The relationship indicated on these exhibits will result if our proposed scale is to become effective. We have rates in effect today on these various commodities indicated in the exhibit on scale basis. Our proposal, as related to these other commodities, is indicated by Column A on Exhibits C-183 and C-184.

The scale proposed in my Exhibit C-177 is higher than the scale proposed by the Southwestern carriers on the edible livestock in Docket 17000. It is only indirectly related to that scale.

(Witness Inkley, Exhibits C-177 to C-185 were received in evidence.)

F. B. Clark, was thereupon called as a witness, and having been duly sworn testified as follows:

Direct examination.

By Mr. Outlaw:

I am assistant general freight agent, Missouri Pacific with headquarters in St. Louis, Missouri. I am going to [fol. 850] deal with the so-called 9702 territory and likewise the Wichita-Kansas City 9702 territory and generally the rate scales.

Exhibit C-186 portrays the situation—that is, the present and prior rates on horses and mules, carloads, from points in Arkansas and Louisiana to St. Louis, Mo. When I say "St. Louis, Mo.," I include National Stock Yards, Ill., the rates being the same. The National Stock Yards is east of the Mississippi River, just across the river.

We have indicated here in the first column the present rates which are in effect today per order of the Interstate Commerce Commission under Docket 12358. Next we have indicated the rates which were in effect prior to the order of the Commission in Docket 12358. First, in cents per car, using standard car and minimum weight, which minimum weight, by the way, likewise—at least, substantially so—governs in connection with actual loading.

There is a distinction in the minimum weight in this territory: that is to say, usually throughout the Southwest a minimum of 23,000 pounds prevails, whereas in this tariff of ours there is a minimum of 23,500 pounds. We believe, however, that a uniform minimum should obtain throughout the territory generally.

Next we have indicated the cents per hundred pounds per Docket 12358 and in the changes which Docket 12358 caused —in this case in the nature of advances. Exhibit C-187 is [fol. 851] a similar statement by the use of the same points to the St. Louis, Mo., market, indicating two sets of distances—one of the Missouri Pacific, whcih naturally the Missouri Pacific would operate; next the short-line distance under the 13535 plan of figuring mileages.

Next we have indicated the route used, next the present rate under the Docket 12358, and the revenues in cents per car based on 23,000 pounds account this being substantially the average loading of the Missouri Pacific System. We have shown this revenue in cents per car-mile, both for our haul and the short-line haul.

Appropriate reference will be found on the bottom of the exhibit. Our next exhibit, C-188, is a 2-sheet exhibit in which we have drawn certain comparisons, Docket 12358, with per-car-mile revenue on other articles in this same territory; that is, from representative points to the St. Louis market. As a matter of fact, the rates on the iron and steel articles, agricultural implements, etc., will apply southbound as well as northbound.

This exhibit is filed for the purpose of portraying to the examiners' and commission's minds what revenue, as a general proposition, the carriers receive on other classes of traffic. We do not contend there is any relationship between iron and steel articles and livestock; that is, specific relationship with respect to competition, etc.; but we do claim and there is a recognized basis of both carriers and [fol. 852] shippers alike, and has been ever since the Interstate Commerce Commission's inception, to compare rates on other commodities moving from and to the same points with a view of showing to the examiners and the Commission just what revenue the carriers derive on other classes of traffic, so that they will have before them some guiding post in establishing rates on horses and mules in this instance.

These average revenues in cents per car-mile were taken from actual statistics of our company as filed with the Interstate Commerce Commission.

Exhibit C-189 is a rate statement to Memphis, Tenn., from these Arkansas and Louisiana points of origin. Here we have indicated the 12358 rates as in effect today with prior rates—that is, prior to 12358—and the changes; and here you will note that instead of advances there were numerous reductions; in fact, the whole list shows reductions in a considerable amount.

Exhibit C-190 is likewise a Memphis exhibit, similar to Exhibit C-187, St. Louis, and here we have indicated the revenue per car-mile via the short line and via the Missouri Pacific Railroad, based on average loading. Of course, these distances, Mr. Examiner, are extremely short from Arkansas to Memphis. For example, one of them there is only 61.9 miles.

Exhibit C-191 is an exhibit to Memphis showing the present rate situation and the per-car-mile revenue on horses [fol. 853] and mules as compared with various commodi-

ties, some of which are the lowest commodities which the Commission has prescribed in this territory. For example, fertilizer, junk, sand and gravel, dead freight as against highly expedited service necessary in connection with the movement of horses and mules.

The examiner calls my attention to average weight on fertilizer used in Exhibit C-191 of 63,000, while on C-188 on the second page we are using 53,060. Our average loading on fertilizer for the year 1927 was 26.53. That is just a typographical error, Mr. Examiner. The figures below are based on average loading of 53,060.

Exhibit C-192 portrays the situation to Vicksburg, Miss., one of the open gateways to the Southeast; and here again it will be observed that the reductions were large by reason of Docket 12358. We have always considered that Class A rates in that territory were not unreasonably high for the transportation of horses and mules.

Exhibit C-193 is another exhibit to Vicksburg in which we have drawn comparison of the car-mile revenue as derived from Docket 12358 via the short line and by the Missouri Pacific.

Exhibit C-194 is a New Orleans exhibit, showing the reductions caused by Docket 12358 in our rates. Exhibit C-195 is another New Orleans exhibit, showing the car-mile earnings under Docket 12358. Exhibit C-195 shows some advances to Kansas City, based on Docket 12358. I would like the examiner to observe these advances as compared with the reductions to the other markets. For example C-192; C-194.

[fol. 854] Exhibit C-197 shows our car-mile earnings to Kansas City, which will apply in either direction. A little later on I am going to draw some comparisons with those car-mile earnings. Our average per car-mile earning on all traffic, carload traffic, for the year 1927 was 25.37 cents. Horses and mules is one of the highest grade traffics from a transportation standpoint that any road handles.

Exhibit C-198 shows the situation to and from Wichita. There has been some actual movements, to my knowledge, on these rates, especially the prior rates. Exhibit C-199 shows the per-car revenue in connection with Docket 12358 to and from Wichita.

Exhibit C-200 shows the percentage of the 100 first-class rates which the Interstate Commerce Commission pre-

scribed for application substantially in this entire territory on dead freight; that is, with the exception of live poultry. On live poultry, it will be observed, the Interstate Commerce Commission gave us 65 per cent of first. On horses and mules we are only asking 45 per cent of first.

Exhibit C-201. I have selected in connection with this exhibit for application between Little Rock and Wichita—Little Rock being the largest point in the state of Arkansas and quite some little market with respect to substantially all classes of traffic—the southbound movement of the commodities which actually move from Wichita to Little Rock, [fol. 855] these being taken from our statistics; and I have also shown what commodities we know to move to Wichita northbound. And I have drawn the per-car mile comparisons; also, the total freight charges in per-car comparisons with horses and mules.

Exhibit C-202. I have drawn a comparison here of the class rates established by the Interstate Commerce Commission for application in Southern territory with the 100 per cent scale in 13535 territory and have averaged it, and I arrive at a percentage of 9.9 per cent which the Commission has established as a scale in Southwestern territory versus Southeastern territory, or 10 per cent in round figures.

In my next exhibit, C-203, I have taken the Southeastern horse and mule scale, which is a fairly recent scale prescribed. I have increased it 10 per cent and have shown the resulting figures as compared with what the Commission gave us in 12358. Southern territory is recognized as one of the low spots in the United States from a rate standpoint, and was so described and referred to by the Interstate Commerce Commission in their case. The Southeast scale is the compromise scale, to some extent.

Regardless of whether the Interstate Commerce Commission have really passed upon this scale, it must be said to be satisfactory to certain interests in that territory, and if it is a reasonable scale to be considered in that territory, certainly the 12358 scale is too low a scale, as evidenced by [fol. 856] Exhibit C-203, for application in Southwestern territory. We have remarked time and time again in substantially every decision from the Commission where the two territories have been given consideration that the Southwestern carriers should receive a higher basis of

rates than for application in the Southwestern territory.

Exhibit C-204 is an actual showing of the situation in effect in c. f. a. territory of the percentage to first class is considerably in excess of what we are seeking in Southwestern territory. These are the commodity rates that actually move the traffic in that territory.

Exhibit C-205 is an excerpt taken from the Kansas City Stock Yards' 57th annual report, ending December 31, 1927. It is gotten up in car numbers, and we call the examiners' attention to the small movement of horses and mules as compared to ordinary livestock.

Exhibit C-206 is a similar showing for account the St. Joseph Stock Yards. Exhibit C-207 is a photographic copy of the horse and mule quotations, shipments, etc., for Friday morning, September 21, 1928, just taken at random.

For the year 1927 the Missouri Pacific handled 3,143 cars [fol. 857] of horses and mules, 37,361 tons for average haul of about 243 miles, for an average load of 11.89 tons, for which we only averaged $58.11 per car, or per car-mile of 23.73. We feel that this was caused by the Interstate Commerce Commission's decision in Docket 12358; that is, the low revenue.

We do not believe that horses and mules are coupled up in any way with ordinary livestock, as the complainants in this case are attempting to do, as evidence by the exhibits filed.

The horse and mule shipments throughout the Southwest [fol. 858] we understand to be only about 5 per cent of that of ordinary livestock. It is subject to the highest expedited service that the carriers give freight. It is very light loading and the risk is high; that is, the per-car values are high and the claim payments are high.

Very little has been stated in this record in connection with certain markets like the National Stock Yards, Ill., and Shreveport, La. Shreveport, La., is one of the largest mule markets in the Southwest. Mules are concentrated there and shipped to different portions of the United States; especially are they gathered for export. A large part of our export movement of mules is to Algeria.

With respect to the proportional rate situation, we cannot conceive the necessity of establishing proportional rates, from any of the markets on horses and mules. Pro-

portional rates, as a general proposition, are only established in connection with equalization purposes or for transit privileges. We do not think it necessary to have one of these markets equalize the other one. As I recall, there are no proportional rates from Southwestern points other than from Wichita and Kansas City to Memphis.

Mr. Tedrow in his statement referred to proportional rates possibly being necessary on traffic moving from one rate territory to another. To my mind, it is simply a lever for securing still further reductions in rates. For example, [fol. 859] Mr. Tedrow might possibly come along a little later and state that from the Southwest to the Western trunk-line territory, on traffic handled through Kansas City, we should grant him a proportional rate to Kansas City. And we believe that it leads up to a bad practice, especially on a light-moving commodity such as horses and mules, where the rate situations on both sides of the Mississippi River are on such a low basis, mile for mile, in measure, as compared with other classes of traffic.

Some reference has been made here in exhibits filed in connection with the 1716 scale. I just want to call the attention of the examiners to one thing: The 1716 scale, growing out of 4004, to our mind was a hook-up scale, livestock in with the packing house products and fresh meats out. We do not believe it can be divorced or treated as a single scale in connection with any basis of rates, even on livestock. We don't think it should. That is my personal opinion.

It was only applied to three markets, as stated by Mr. Corp, and it was afterwards spread; but it certainly hooks up in the same opinion with the fresh meats and packing house products out of those markets to the ultimate destination, and in that respect, at least, there is intimated a proportional rate situation.

(Defendant's Exhibit C-186 to Exhibit C-207, both inclusive, Witness Clark, was received in evidence.)

Cross-examination.

By Mr. Tedrow:

I have said that I believe horses and mules should not [fol. 860] be included with or related to rates on other livestock because of the dissimilarity in transportation condi-

tions. We do not divorce the rates on calves from the rates on other livestock; we don't make separate rates on calves. I believe that in connection with rates on grain, the rates on barley are the same as the rates on corn generally. I think that the rates on rye are the same as the rates on wheat. I am not so sure but it is probable that the rate on spelts is the same as the rate on wheat; the rates on cane and kaffir are the same as the rates on corn. We make no segregation of the corn rates because all commodities just above named come under the heading of "grain and grain products." It is true that the movement of the other commodities is very much less, a very small fraction of the movement of wheat and corn. Horses are not a species of food products, although you could term both horses and cattle "livestock." My reasons are one, the smaller movement of horses and mules as compared with other kinds of livestock, the greater liability to loss and damage; the fact that we feel that horses and mules take a higher value than edible livestock, and another reason is that on livestock, as a general proposition, the carriers receive the benefit of an outbound haul on the products, such as packing-house products and fresh meats, whereas with horses and mules the move is generally completed in passing over the rails of a carrier and we think that should be taken into consideration in connection with the freight rate situation. The majority of horses and mules are sold to buyers in the immediate territory of the market to which they are [fol. 861] shipped. We attempted to secure a record in Kansas City as to whether there was a large movement of horses and mules out of Kansas City but we were unable to confirm that there is a movement of any consequence out of Kansas City or St. Joe.

From the market at Fort Worth and Shreveport horses and mules move off over Texas and Louisiana and there is a large amount of mules moved out of Kansas City every year down to the cotton country.

Horses and mule traffic is one of the most expensive grades of traffic for the carriers to handle from a transportation standpoint, is more expensive than cattle and the risk is much greater.

[fol. 862] Referring to Exhibit C-198, if there is a movement of horses from Arkansas and Louisiana to Wichita it is very small. There is a movement from Wichita south-

bound, and the rates southbound are the same as northbound.

We received claims on edible livestock for delay in transit on account of the change in market, but do not have any knowledge of receiving claims for delaying horses and mules for that reason, because I do not understand that there is a standard market on horses and mules. They are sold to the highest bidder.

In connection with proportional rates, the rates from Kansas City to Memphis are not made altogether like the Wichita rates to Memphis are made.

The Interstate Commerce Commission have given us a new basis of making rates from Wichita versus Kansas City, we will say, to Memphis. The Kansas City rate is made through St. Louis by the use of a 200-mile haul across the state of Missouri and not the average haul of 325 miles. Then it is made by the use of the low Mississippi Valley adjustment from St. Louis to Memphis. Wichita, Kas., has been placed by the Interstate Commerce Commission under 13535 in the Southwest, and those rates naturally should be made on the Southwestern scale.

Practically all classes of traffic from Kansas City to Memphis are made with relation to St. Louis.

[fol. 863] F. A. SWENSON was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

By Mr. Outlaw:

I am assistant general freight agent of the Fort Worth and Denver City Railway and the Wichita Valley Railway at Fort Worth.

I will introduce the proposal of the carriers affecting the Texas differential territory, the New Mexico differential territory, and the rates from Colorado or between Colorado on the one hand and the differential territory on the other hand; also, between that Western group territory on the one hand and all of the 13535 territory as covered by this 12358 complaint, and also support the proposal of Witness Inkley in an exhibit which I have prepared.

Mr. Inkley's intention was to propose the Column 45 rates in I. C. C. Docket 13535 in the territory described in Item No. 90 of Southwestern Lines' Tariff 131-E, J. E. Johnson's Agent, I. C. C. 2049, say, pages 28 and 29, including the Mississippi River crossing, East St. Louis, Memphis, Vicksburg, and New Orleans, as taking Rate Basis 1, except such points as I will hereafter exclude and place in Rate Basis No. 2. It is also proposed to remove from Rate Basis 1 of this Item 90 all points in Colorado, all points in New Mexico, all points in Texas on the Fort Worth & Denver west of Amarillo to Texline, Tex., inclusive.

Such points as will be subject to Rate Basis No. 2, it is [fol. 864] proposed to apply the regular Column 45 differentials in Docket 13535.

For convenience, I wish to call Rate Basis No. 1 the "Eastern" territory and Rate Basis No. 2 the "Western" territory.

It is also proposed to establish interterritorial rates between the eastern group and the western group on the basis of a system of differentials which will be used or applied for the entire length of the haul in such western group. Briefly, these differentials will be arrived at by taking the difference between Column 45 of the 13535 scale—that it, the flat scale—and Column 45 or 45 per cent of the 120 per cent of the first-class rate in 13535.

It works out in the following manner: For a 500-mile haul, the western group scale will be 90 cents. For the eastern group scale, it will be 78 cents. The difference is 12 cents.

For a haul of 500 miles, of which 400 will be in the western group and 100 in the eastern group, the rate will be 78 cents plus 10 cents, or a total of 88 cents, which makes 2 cents less than the full western group scale and 10 cents higher than the full eastern group scale.

For a haul of 500 miles, of which 100 is in the western group and 400 miles is in the eastern group, the rate will be 78 cents plus 5 cents, or a total of 83 cents. This will be 7 cents less than the western group scale and 5 cents higher [fol. 865] than the eastern group scale.

This operates under the well-established principles of rate-making that results in a diminishing rate per ton per mile as the haul increases in the application of this basis

for interterritorial application as between the eastern rate group and the western rate group.

Exhibit C-208 is a comparison of the carriers' proposal in this proceeding covered by Witness Inkley's Exhibit No. C-177 on horses and mules, carloads, with other articles as explained by the title page, and is self-explanatory.

On the exhibit the columns are headed "to and from". You may change it to "between". Page 2 shows a comparison of rates and so forth between Kansas City, Missouri and Fort Worth, Texas, page 3 between Kansas City and Amarillo, Texas, page 4 between Wichita, Kansas and Fort Worth, Texas; page 5 between Kansas City and Abilene, Texas; page seven between Kansas City, Missouri and Houston, Texas, page eight between Oklahoma City, Oklahoma and Fort Worth, Texas.

On each of the pages, 2 to 8, inclusive, under Column 4, the headings are headed "Average or Minimum Weight" The weights without the reference mark "1" are the average net weights or loads as per page 9. Where the reference mark "1" is used on pages 2 to 8, inclusive, under Column 4, the weight used is the minimum weight prescribed by the Interstate Commerce Commission in I. C. C. Docket 13535.

[fol. 866] Column 7 figures on pages 2 to 8, inclusive, are arrived at by multiplying the distance by the percentage of empty to loaded haul. That is explained on page 10.

In Column 7 I show the average empty mileage between Kansas City and Fort Worth.

We will take Column No. 3 as the rate basis, which will be Column 45. Column 4 is the average or the minimum weight. In this particular case it is the minimum weight on horses and mules. Column 5 is the rate in cents per hundred pounds proposed between Kansas City and Fort Worth. In Column 6 is the revenue per car on the horses and mules. The empty mileage on horses and mules is theoretical, of course, but it is 507 miles for the actual distance, and the figure of empty mileage on a stock car is 83.12 per cent of the loaded mileage.

The gross ton-miles, Column 8, is arrived at by using the gross tons of the empty car for 421 miles and the gross tons of the loaded car for 507 miles. You arrive at the revenue per gross ton-mile and the gross car-mile in the same manner.

In other words, Column 8 figures on page 2 to 8, inclusive, are arrived at by adding to the gross ton-miles of the empty haul the gross ton-miles of the loaded haul.

Column 9 figures on pages 2 to 8, inclusive, are arrived at by dividing Column 6 by Column 7, which can be proven by multiplying Column 8 by Column 9, giving the answer in Column 6.

[fol. 867] Column 10 is arrived at by first determining the gross car-miles on the empty haul plus the gross car-miles on the loaded haul, the empty haul being determined by explanation of Column 7 on page 10, and then by dividing the revenue per car under Column 6 by the total so made.

All of the notes and reference marks on pages 2 to 8, inclusive, are explained on pages 10 and 11.

Page 9 is self-explanatory, and in support of the weights used I call attention to Statement No. 28100, page 19, of I. C. C. Bureau of Statistics for the year 1927, giving the average loading as follows:

In the Southwestern region on agricultural implements, 19.17 tons; beverages, 24.44 tons; eggs, 11.08 tons; butter and cheese, 11.42 tons; canned goods, 19.98 tons; fertilizer, 25.34 tons; furniture, new, 8.79 tons; iron and steel, 27.96 tons; syrup and molasses, 30.62 tons.

In the Western district, the average number of tons per car on agricultural implements was 14.66 tons; beverages, 20.51 tons; eggs, 11.31 tons; butter and cheese, 12.63 tons; canned goods, 25.04 tons; fertilizer, 27.44 tons; furniture, new, 9.87 tons; iron and steel, 28.99 tons; syrup and molasses, 32.13 tons. In both cases, the syrup and molasses includes sugar.

The figures opposite Column 7 on page 10, showing the per cent, are the same as shown on Exhibit C-180, introduced by Witness Inkley, and the first figure for stock cars [fol. 868] should read "83.12" per cent, percentage empty of loaded mileage; box cars, 24.17 per cent, percentage empty of loaded mileage; refrigerator cars, 66.85 per cent, percentage of loaded mileage. I have used 100 per cent on poultry cars, and I will accept the figures shown on Exhibit No. 180 as 97.07, percentage empty of loaded mileage.

Note D on the bottom of page 10 should read: Via Wichita Valley Railway, Waurika, Ok.; C., R. I. & P. Railway, Chickasha, Ok.; St. L. S. F. Railway, Oklahoma City, Ok.; M. K. T. Railroad; authority for the distances being A. C. Fonda's I. C. C. 225, C., R. I. & P. I. C. C. C., 11664, St. L.-S. F. Railway, I. C. C. No. 7543, M.-K.-T. Railroad I. C. C. No. 382.

There should be added to this page also Note # E, reading: Via M.-K.-T. Railroad of Texas, Dallas, Tex.; Texas & New Orleans Railroad, Denison, Tex.; M.-K.-T. Railroad Lines, as per A. C. Fonda's I. C. C. 225, M.-K.-T. Railroad I. C. C. 382.

There is a typographical error in Column 8 page 2 of my Exhibit C-208, opposite horses and mules. The figures should read 20,679 instead of 20,579.

This principle of using differentials in making rates between a point in a low-rated territory and a high-rated territory is, in my opinion, sound, sane and logical.

It is inconceivable to think that the scale applicable in the low-rated group should be made applicable for a through [fol. 869] haul from a low-rated group point to the higher-rated group point. Likewise, it would be unfair to apply the scale applicable in the high-rated territory for a through haul from a point in that group to a point in the lower-rated territory.

It is true that there is development in the state of Texas in the so-called differential territory, but the new lines under construction in that territory, such as the C., R. I. & P. Railway from Amarillo to the Texas-Oklahoma state line or towards Liberal, Kas., is not at this time subject to the benefits which that line will eventually receive.

For instance, the line has only been completed for a distance of 57½ miles, from Amarillo to Stinnett, Tex. There is very little development between Amarillo and Stinnett. It is a difficult territory through which to construct a railroad, and the topography of the country makes it almost impossible to do very much farming. It is a range territory, and when they reach Stinnett there is oil development. I found practically no population along that railroad between Amarillo and Stinnett. They have a few towns, but I doubt if they have as many as a thousand people along that 57½ miles of road.

I also want to mention the new lines that have been constructed by the Fort Worth & Denver west of Estelline toward Dimmitt, Tex., and from Silverton toward or to Lubbock, Tex. The actual new-line mileage west of Estel-
[fol. 870] line into the plains is 204.1 miles.

The line from Estelline to Quitaque was opened for the handling of carload business only on November 1, 1927. On June 1, 1928, the line west of Quitaque to Dimmitt, Lubbock, and Silverton was opened for the handling of carload business only.

The business that we have handled since the line was opened has been very small and indications are that this year we will not have a very heavy tonnage.

The territory from Estelline to the cap rock, which is between South Plains and Quitaque, is principally a cotton country. They grow grain, some wheat, mostly kaffir corn and milo maize. There are also some ranges on this line below the cap rock.

When you get above the plains, the principal products north of Sterley will be grain. There will be some cotton. South of Sterley the products will be grain and cotton. West of Sterley to Dimmitt the products will be principally grain with some little cotton.

In I. C. C. Docket 13535 the Interstate Commerce Commission placed the entire line west of Estelline on the Fort Worth & Denver City Railway in differential territory, permitting us to meet the rates in effect at Plainview and Lubbock via the Santa Fe under proper fourth-section authorities.

Another line that has been built in so-called Texas dif-
[fol. 871] ferential territory is the Quanah, Acme & Pacific Railway from MacBain to Floydada, a distance of 26.6 miles. The tariffs on file with the Interstate Commerce Commission indicate that this road was placed in operation on July 1, 1928; and there is only one station between MacBain and Floydada, named Dougherty.

There is pratically no development between MacBain and Floydada, and the only point which the Quanah Railroad will reach of any consequence will be Floydada, a point already served by the Santa Fe; and certainly the conditions between MacBain and Floydada should be considered in continuing the differential basis on that part of the line the

same as they now have in effect on the line east of MacBain.

Several years ago the Wichita Valley Railway constructed a line from Byers, Ok., to Waurika, Ok., a distance of 35.9 miles. There is no development between Byers and Waurika, Byers being the last station in Texas and Waurika being the first station in Oklahoma beyond the river. This line crosses the Red River, and there is no additional traffic being handled by the Wichita Valley that was not formerly handled. It is true we have been able to reduce some operating expenses, but there has been no added traffic by reason of the construction of this line.

The operating conditions on the Fort Worth & Denver City Railway between Fort Worth, Tex., and Texline, Tex., [fol. 872] cannot be determined from the cost studies that the company or the various departments of the company work up from time to time except in two ways. The cost studies are determined by dividing the line at Childress, Tex., and the cost figures for the line north of Childress in some cases show lower amounts than for the line south of Childress. As an illustration, the cost per 1,000 net ton-miles at the points north of Childress, for the year 1924, maintenance of equipment is 26.1, while south of Childress it is 25.4 cents.

In this particular case, the cost is higher north of Childress. This is explained by the heavy interchange of traffic at Amarillo with the Santa Fe and the Rock Island, with the heavy interchange with the Rock Island at Dalhart and at Texline. Practically all of this business upon which this expense is made is through or overhead traffic.

Take the item of transportation expense, 35 cents per 1,000 net ton-miles for the line north and 39.8 for the line south of Childress: There is a greater amount of trains operated on the line south of Childress than on the line north of Childress. Certainly the transportation expense will be greater on the south end of the line than on the north end.

Taking the item of the locomotive repairs for the freight train-miles, because of the larger number of trains handled on the south end, the cost naturally would be greater than on the north end.

[fol. 873] In addition to that we maintain a larger amount of switch engines on the south end of the line than we

do on the north end—Wichita Falls, Fort Worth, and Dallas—and local trains do considerable switching at points like Quanah, Vernon, and Chillicothe. Naturally, that item of expense is considerably greater than on the north end. In fact, at Wichita Falls the Forth Worth & Denver City Railway does all the switching for the Wichita Valley Railway.

Taking the cost of fuel per freight train-mile on the north end of 72.1 as against 70.4, oil burners are used as far as Amarillo, and coal burners from Amarillo to Texline. Oil is purchased at various points on the line; sometimes at Amarillo, sometimes at Iowa Park, Electra, Wichita Falls, and transported from the various points of origin to storage tanks at various points along the line.

Coal is hauled from Colorado to Texline, Dalhart, Amarillo, and that naturally makes a somewhat higher figure on the north end than on the south end.

Now, as to the traffic density of horses and mules on the line of the Fort Worth & Denver west of Amarillo to Texline, I wish to state that for the period of October 1, 1917, to June 30, 1928, this 117 miles of road only received 1 car of horses and mules. It forwarded 36 cars.

Of course, in reporting horses and mules from this territory, no attempt is made to secure from agents whether the [fol. 874] car had mules or horses; but each year there is a large movement of cattle from Channing, Tex., Tascoma, Tex., and Perico, Tex., and with these cattle are moved cars of horses or range horses in order that the owner transporting these cattle may properly handle the cattle at destination. Usually these range horses have in the past moved at the cattle rates, range cattle rates; and I should say that over half or probably all of the 36 cars referred to were horses moved in connection with cattle.

On the Wichita Valley Railway west of Sagerton to Spur, a distance of approximately 75 miles, for the same period they forwarded only 5 cars of horses and mules and received 1 car. As contrasted with this, the Wichita Valley Railway handled during the same period only 41 cars of horses and mules, and in a number of cases these horses were probably range horses moving with cattle. During the same period the Fort Worth & Denver City Railway handled 646 cars; that is, the entire line of the F. W. & D. C.

Cross-examination.

By Mr. Tedrow:

In Western Texas when cattle are shipped out to other ranges ange horses sometimes are moved in connection with cattle. They do not ship range horses with cattle that are sold to a buyer.

In connection with the scale proposed on Exhibit C-208, page 4, the rate of return of the Southwest carriers, as figured, is far from what the law allows and we are pro-[fol. 875] posing what we think is a reasonable rate. Taking any sort of a valuation, Interstate Commerce Commission or Railroad Commission of Texas valuation, you won't get anywhere near the rate of return that the law allows. In my opinion the rates on horses and mules in the Southwest are very low, and the proposed rate on horses and mules, as compared to rates already fixed by the Interstate Commerce Commission in I. C. C. Docket 13535, make a very much lower return for the service performed than on the other commodities.

(Exhibit C-208, Witness Swenson, was received in evidence.)

H. R. LAKE, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Outlaw:

I am superintendent of transportation of the Atchison, Topeka & Santa Fe Railway System, with headquarters at Chicago.

The handling of livestock is by far the most expensive of all freight a railroad is called upon to transport, because of the extraordinary, special and exclusive facilities with which the railroad must equip itself to accomplish the movement and the exceptional and expedited handling necessary to minimize hazards of loss from death and injury. Horses and mules are handled with greater hazard and risk of damage than other classes of livestock such as cattle, hogs and sheep. Horses and mules can be handled

[fol. 876] only in cars provided with ample ventilation, yet at the same time affording protection from the weather. There has been developed a special car for the handling of this traffic, known as single-deck stock cars, costing approximately $2,006 per car. The Santa Fe owns 7,132 single-deck stock cars which are necessary in the transportation of horses, mules and cattle, representing an investment of $14,306,792. The use of stock cars is very largely confined to the movement of livestock, there being only a few other commodities that can be safely transported therein. Therefore when not engaged in the handling of horses and mules or other livestock there is a heavy burden to carry in idle equipment which would not be the case if an all-purpose car could be used in livestock service.

Horses and mules as with other livestock, require special and exclusive facilities, not comparable with any other commodity from point of shipment in the way of stock yards to care for stock while being brought in from ranch, pasture, or farm for shipment, or in being held at destination for delivery to consignee, and loading chutes for the loading or unloading. These yards are equipped with troughs for watering stock, and water is provided in a manner as is most consistent with economy. Stock yards are partitioned off into pens of various dimensions, the size of yards and number of pens being contingent upon the volume of business handled. Santa Fe stock yards [fol. 877] are built according to standard plans observed over the entire system, very heavy material being used with fences 7 feet high because of extraordinary stresses incident to the crowding of animals in the pens unaccustomed to each close confinement.

The cost of constructing a stock yard using four-pen yard for material and labor is approximately $2,200, which figures represents the cost of material and labor of constructing pens only, not including cost of stock yard sites which, in practically all cases, requires more ground than the ordinary right of way affords and must be readily accessible to highways.

Extraordinary facilities are provided at convenient locations for the feeding, watering and resting of livestock in transit required by federal law. These yards are

equipped with troughs, water and feed racks in each individual pen, and some of the pens are shedded to afford livestock protection from weather. Such feed yards are also equipped with barns for carrying supply of hay and other feed.

At the large market centers, such as Kansas City, Chicago, St. Joseph, and Wichita, there are large stock yards owned and operated by stock yards companies serving all railroads. The railroads pay a charge of $1 per car for the loading and $1 per car for unloading of stock, and $1 per car for trackage. Before stock cars can be placed for loading they must be cleaned of old bedding and refuse and rebedded to afford safe footing for the animals that they may be kept on their feet in transit. [fol. 878] To accomplish this, it is necessary to provide cleaning tracks at convenient locations to which tracks cars must be switched, cleaned, switched back into train yards, or into trains. A good example of cleaning facilities which the Santa Fe has provided is at Morris, Kansas, 15 miles west of the stockyards at Kansas City, bought especially for the purpose — a total outlay of $152,596.39.

The excess cost of moving stock cars from Kansas City stock yards to these tracks and off of the cleaning tracks after cleaning and into trains as against the cost of straight-of-way movement in cars in through trains from Kansas City west is approximately 53 cents per car. The average cost of cleaning stock cars at Morris cleaning track is $1.10½ per car.

Railroads are justified in providing and maintaining such stock car cleaning tracks only adjacent to the larger markets. Cars released at other markets for interior destinations are cleaned at most convenient locations. Ordinarily this is done at the next point of loading by the railroad's track forces who also bed the cars where this service is performed by the railroad. Under such circumstances the cleaning is more expensive, due to the loss of time by track forces, as will be explained.

Especially does the average cost per car run high where there are small shipments involved, such as is usually [fol. 879] the case in horses and mules because of the high percentage of time lost by track forces per car cleaned. At all such carcleaning points the refuse from cars must

be loaded on track push cars and trucked to convenient locations where track is on fill, where it is dumped, all of which adds materially to the individual car cost in preparation for shipment.

The bedding in stock cars, where sand or cinders are used, will average about 3 tons per car, additional weight the railroads must transport. The bedding is done by the railroad and the shipper pays a small tariff charge of $1.00 per single-deck car, whereas the cost of bedding cars ranges from two and one-half to seven or eight times that amount, depending upon the kind of material used, its cost, distance handled, and labor of loading and unloading. Sand is used for bedding cars on the Santa Fe, in the main, costing all the way from 15 cents per yard to 75 cents per yard. Another item is the cost of spotting cars to the bedding track or that part of stock yards track where bedding material is stored and labor placing material in cars. The shipper has the privilege of bedding the car himself rather than pay the small charge but it is seldom that he does so. If weather conditions are bad and cars are rebedded in transit, the additional bedding is at the sole expense of the railroad company. The railroad agent or other representative is present at the loading to guard against controversies and claims for lost animals. The handling of horses and mules is extremely hazardous and [fol. 880] all manner of safeguards are thrown around the operation, with added expense. Because of horse and mule contracts having to be executed in providing caretakers with free transportation, the waybilling of horses and mules, as with other livestock, requires more time and stationery than almost any other commodity.

Cars of horses and mules in being switched are never "kicked" or "dropped," but shoved by engine to a coupling or position, slowing up the operation. Horses and mules must be given very close attention en route by trainmen or caretakers, if they are available, to keep the animals on their feet. Horses and mules during extremely hot weather must be protected from heat.

Federal law requires that livestock shall not be confined in cars nor kept without feed and water in excess of 28 hours, unless the shipper so elects. The shipper may ex-

tend this period to 36 hours. The railroad is allowed no discretion and is heavily fined if it is not done.

Caretakers are furnished free transportation and facilities to accompany livestock in trains in which it moves and free transportation on passenger trains returning to point from which the shipment started.

Facilities must be provided for these caretakers to ride in comfort and where there are only a few with any one train they can be accommodated in the caboose with train [fol. 881] crew. Where there is a considerable number, an extra car known as a "Drover's car" is provided. The drover's car add extra tonnage to train, taking the place of a revenue car of freight, and no charge whatever is made for this service. It costs just as much to handle a caretaker returning on passenger train as it does a pay passenger, yet no charge is made.

Livestock caretakers accompanying stock in train present somewhat of a problem from a personal injury standpoint in that there is a distinct element of risk, it being necessary for train crews to watch out for them.

The high susceptibility of horses and mules to damage from injury and death subjects the railroads to claims for damage, and claims frequently follow such movements. Horses and mules are especially prone to injury, particularly head injuries because of animals jerking their heads, and so forth.

The railroad bears an extra feeding charge where schedule is not made and stock has to be given an extra feed in transit. Horses and mules are usually sold directly after unloading at destination and therefore the best equipment, the best handling and no delay is necessary to insure against loss to the seller. It is not safe to use old equipment because of nails working out in transit, doing injury to the animals.

At unloading point for feed, water and rest, the best covered pens available must be used. The higher grade horses usually have been barn-fed for some time prior to shipment and are not in condition physically to stand [fol. 882] weather extremes.

A study made of the empty and loaded car movement of stock cars compared with other equipment for the month of October, 1926, being a representative period, is as follows:

	Per cent of total loaded	Per cent of total empty	Ratio of loaded empty
Stock Car Mileage	56.03%	43.97%	78.48%
Single Deck			
Double Deck	53.17	46.83	88.06
Total	55.58	44.42	79.91
Live Poultry Car Mileage	52.79	47.21	89.43
Refrigerator Car Mileage	63.54	36.46	57.39
Boc Car Mileage	78.92	21.08	26.71
Furniture-Auto Car Mileage	81.07	18.93	23.35
Total Box, Furniture-Auto Car Mileage	73.31	20.69	26.08
Coal Car Mileage	60.67	39.33	64.82
Flat Car Mileage	65.18	34.82	53.41
Tank Car Mileage	49.77	50.23	100.91
All other Freight Train Car Mileage, excluding Caboose	59.87	40.13	67.04
Total Freight Train Car Mileage, excluding Caboose	64.69	35.31	54.58

Live poultry cars are the only class of cars having a greater ratio of empty to loaded movements. Livestock requires a much higher percentage in tons of dead weight in [fol. 883] equipment per ton of revenue freight than any other commodities, as a class, moving in volume. The average load of livestock per car, including horses and mules, based on 111,696 cars handled by the Santa Fe during the year 1927 was only 11.17 tons per car, whereas the grand total of all carloads of freight handled was 1,546,807 cars—an average of 30.76 tons per car.

The average weight of an 80,000-pound capacity, 40-foot Santa Fe single-deck stock car is 46,600 pounds or 23.3 tons or about twice the weight of an average load of livestock.

In addition to this bedding material mentioned before is carried. Light loading of cars makes for expensive train handling, lowering the gross as well as the net tons per train.

The handling of stock cars, either loaded or empty, costs more in fuel consumption than any other class of equipment because of the slatted cars affording maximum wind resistance.

Cross-examination.

By Mr. Tedrow:

The facilities over at Morris, Kansas were built primarily for the cleaning of stock cars. We used those facilities only to a small extent not over ten per cent for other purposes, and we would not have that facility except for the stock cars. As to caretakers accompanying shipments of horses and mules, they do not render very much service in connection with their free trips to market. In the main on the Santa Fe we clean our stock cars on each movement, not alone to preserve the cars but to save hauling that extra tonnage around, which adds to our fuel expense.

[fol. 884] We do not rebed cars at Morris at the cleaning track; we do rebed cars at Morris at the shipping point there, right at Morris station, if we have a shipment of stock moving from Morris proper.

It is a much more complicated affair to bill a car of livestock than a car of grain, and requires more stationery. I don't know what the extra cost of the billing of livestock would be. The average distance that horses and other livestock are required to be stopped to feed, water and rest under the Federal statute, is from two to three hundred miles.

Redirect examination.

By Mr. Outlaw:

We select the best of our equipment for the horses and mules, to avoid any possible projections inside of the car that might do injury to them. For instance, if we had a string of 20 stock cars—and we had a shipment of one or two cars of horses, we would select the best cars in that string and switch them out. That would be an additional expense.

Recross-examination.

By Mr. Corp:

The preponderance of the movement of empties, is west bound and south bound.

B. F. SEGGERSON, was thereupon called as a witness, and having been duly sworn testified as follows:

Direct examination.

By Mr. Harrington:

I handle rate adjustments and commerce work in the general freight department of the Southern Pacific at El [fol. 885] Paso. My first exhibit C-209, is a profile map of the Southern Pacific showing the situation between El Paso, Tex., and Tucumcari, N. M. This exhibit in the lower portion shows a condensed profile of the Southern Pacific line from Tucumcari to Dawson.

The figures denoting ruling grade per cent, appearing at the bottom of profile, are divided as to the distance between points which the grade applies. The elevations are also shown, and it will be noted that at Corona on main line between El Paso and Tucumcari, the elevation approaches 7,000 feet.

On the branch line between Tucumcari and Dawson, it will be seen that a considerable portion of the route is at elevation in excess of 5,000 feet, portions of which being in excess of 6,000 feet. There is no regular freight helping district in either of these territories, although on the branch line between Tucumcari and Dawson it will be noted that a portion of the line is in excess of 2 per cent grade. There is no helper service regularly required in this district on account of the loaded trains coming down grade toward Tucumcari; that is, eastbound.

This exhibit is the form regularly prepared by the operating department for presentation in cases before regulatory commissions and shows in greater detail the physical characteristics of the line. The pertinent portion of the exhibit is to be found in the caption, "Average Per Mile of Line." For instance, there is .185 of a mile of curved track for each mile on the route between El Paso and Tu- [fol. 886] cumcari; miles of ascending grade 1 per cent and over, eastbound, .136 of a mile, while westbound is .156; degrees of curvature per mile of line on this district is 16.2.

In comparison, a valley territory may be cited to show the unusual severity of the routes in question. Comparable figures for valley territory such as exist on line of the Southern Pacific between Chico and Bakersfield, 367 miles,

shows miles of curved track per mile of line to be .06; miles of descending grade 1 per cent east of westbound, none; and degree of curvature per mile of line but 3.

Exhibit No. C-210 is largely explanatory of No. 209. Now, this exhibit, I believe, explains itself, but particular attention is invited to the last section thereof beginning with No. 16, showing the miles of curved track, .185. That is between El Paso and Tucumcari. And from Tucumcari to Dawson, .289.

Now, 17, degrees of curvature: Between El Paso and Tucumcari, 16.2; between Tucumcari and Dayson, 45.3. Now, 18, I want to particularly express. Miles of Road per Complete Circle, 22.3 between El Paso and Tucumcari; 7.94 between Tucumcari and Dawson. I hardly think any further comment on this particular exhibit is necessary at this time.

Exhibit No. C-211. This statement shows the population as of 1920 and area in square miles, also population per [fol. 887] square mile, of El Paso County, Tex.

I want to call particular attention to the population of El Paso County, Tex., wherein is the city of El Paso and which practically constitutes the population of that county. In 1920, 101,877. Also, the sparsity of population of other counties in New Mexico; Torrance County, for instance 9,731; with an area of 3,369 square miles, and a population of 2.9 per square mile.

That county, I believe, is fairly representative of the other counties in that state. As a matter of common knowledge, New Mexico is very sparsely settled and consequently results in a sparsity of traffic.

Exhibit No. C-212. The caption, I believe, explains itself. This shows certain data, square miles, in Arkansas, Louisiana, Oklahoma, and Texas; population, and population per square mile. Also, New Mexico, with a total area of 122,634 square miles, 2.9—which I believe is one of the lowest in the United States, possibly with the exception of Wyoming or Nevada.

Exhibit No. C-213. I desire to invite particular attention to this exhibit for the reason that it shows the receipts of the stations of the Southern Pacific Company located in certain counties in the state of New Mexico through which that line traverses. This statement shows the inbound and outbound freight and passenger receipts against the

payrolls and the taxes paid by the Southern Pacific in those counties.

[fol. 888] As will be noted, under the head of Lincoln County, the expenditures exceeded the receipts by $214,136.72. Now, by the way, this was during the period of 1925, and the situation is practically the same today. It goes down the line to Torrance and various other counties there, showing that the Southern Pacific Company actually paid out more in taxes and on payrolls than they received at those stations for freight and passenger service. It again emphasizes a sparsity of population or traffic in that particular territory.

Exhibit C-214. This exhibit shows the movement of horses in carloads from points in New Mexico on the Southern Pacific Company and the tonnage for the years 1925, 1926, and 1927. The destinations are also shown.

As will be noted, in 1925 there were but 18 cars forwarded; 169 tons of horses and mules. That is, there were 18 cars of horses and mules; there were 14 cars of horses and 4 cars of mules.

And the similar information is shown for 1926 and 1927, indicating that there is a very small movement of horses and mules out of the state of New Mexico so far as the Southern Pacific Company is concerned.

Exhibit C-215 shows the number of horses and mules, cattle, sheep, goats, swine, and chickens as of January 1, 1920, and January 1, 1925, in the various states indicated. New Mexico is shown on the first and second pages, and it [fol. 889] will be readily seen that the number of head of horses and mules in that state is not comparable with the number of those animals in other or adjoining states, the number being far below. The matter of the number of head of other livestock, I think, is hardly worth while mentioning here. It explains itself, I believe, and the source of the information is given on the last page.

The last column headed "per cent State Total," indicates one hundred per cent of the mileage of the entire state; seventy-five per cent indicates seventy-five per cent of the area of the state.

Exhibit C-216. Statement showing the total revenue accruing to the Southern Pacific Company, Pacific Lines, and the total amount paid in loss and damage claims by the Southern Pacific Company, Pacific Lines, for each calen-

dar year from 1920 to and including 1927, for carload traffic; all commodities, livestock other than horses and mules. This statement also shows various relationships and the total number of cars handled by the Southern Pacific Company, Pacific Lines, for the same periods.

Now, there are a lot of figures on this statement, and some of them I hardly think are pertinent to the issues involved in this proceeding.

I desire to invite attention to Columns 10, 11, and 12. It says on the left-hand side of that column the figures, as will be seen, cover all carload traffic; then the next column [fol. 890] shows the livestock other than horses and mules; then we get over to horses and mules.

For instance, 1920, the percentage of claims paid on account of damage or loss to horses and mules was 5.77 against 2.26 other livestock, and 1.28 of all other traffic. The other figures show similar information. The peak payment of claims on those animals was reached in 1925 when the percentage paid on horses and mules was 4.18 against 1.10, other livestock, and .70, all other carload traffic. These percentages are the loss and damage payments on claims on horses and mules as compared with the payment of claims on other livestock and all other commodities. That is the relationship.

Those exhibits all go for the Southern Pacific Company, Pacific Lines, and this exhibit 1 I am about to introduce will be for the T. & N. O. or the lines east of El Paso.

Exhibit C-217. The El Paso division of the Texas & New Orleans Railroad extends from Withers, Tex., a point just west of San Antonio, to and including El Paso, a distance of 640 miles, including branches. This is a continuous stretch of main line except for one branch extending from Spofford to Eagle Pass, a distance of 34 miles. Construction was completed and this line placed in operation in 1883.

In accounting for and reporting operating expenses by divisions, the operating expenses of the El Paso division of the Texas & New Orleans Railroad do not include any [fol. 891] portion of the operating expenses of the San Antonio, Tex., terminal. San Antonio, Tex., and the terminal at that point is on what is known as the Houston division of the T. & N. O., and all operating expenses of that terminal are included in the operating expenses of the Houston division.

The section of South and West Texas traversed by the El Paso division is generally rugged and mountainous. The elevation at San Antonio is 665 feet above sea level; at Del Rio, 964 feet above sea level; at Sanderson, 2,271 feet; at Valentine, 4,232 feet; and at El Paso, 3,773 feet. The line reaches the highest elevation, 5,075 feet, at Paisano, Tex.

The annual rainfall in all of the territory traversed by the El Paso division is comparatively light, but occasional heavy downpours of a local cloudburst character are not unusual; often resulting in serious washouts and other injury to track and roadbed.

The principle of differentials for Texas differential territory, in which territory the El Paso division of the T. & N. O. Railroad is situated, and the boundary line of Texas differential territory, is so well established and has been upheld by the Interstate Commerce Commission in so many cases it seems hardly necessary to go into considerable detail in this case with respect to the necessity for differential rates on horses and mules to, from, and between points in this territory.

[fol. 892] With the exception of a short stretch of distance, beginning at Withers, and extending westward, where there are some level farm lands utilized for dry farming with intermittent success, the entire territory served by the El Paso division of the T. & N. O. Railroad is given over almost entirely to stock raising. The climate is extremely arid, annual precipitation not exceeding 15 inches per annum on the average, and in many sections traversed by the line the precipitation is less than 10 inches per annum. The country is sparsely settled, average population of all counties traversed being 1.9 persons per square mile, based upon the 1920 census.

In so far as originated and terminated traffic is concerned, the territory is unproductive of high class tonnage, and the volume of such tonnage as is produced in the territory is very light, consisting chiefly of livestock and the products thereof, with a limited amount of products of mines.

Due to grades, curvatures and general conditions in this arid and mountainous territory operating conditions are

considerably more expensive and difficult than in common-point territory.

This exhibit shows the revenue carload freight traffic density of the T. & N. O. Railroad in Texas for the year 1927, separated so as to show the density for all portions of line in common-point and differential territories. The statement is also prepared in a manner to show the traffic density of this line in the two territories of originated, ter-
[fol. 893] minated and intermediate traffic. These figures were prepared by the auditors of the T. & N. O. in Houston at my direction.

Figures on traffic density submitted by complainants in this case make no segregation as between originated and terminated, on the one hand, and intermediate or overhead traffic, on the other hand, and demonstrate the unreliability for rate-making purposes of traffic density figures that are not so segregated.

The El Paso division of the T. & N. O. Railroad may be characterized as the spout of a funnel, since all traffic handled by the T. & N. O. between Western and Pacific Coast points, on the one hand, and Southwestern and Eastern and Southeastern points, on the other hand, either converges or diverges at San Antonio. Naturally, this creates a heavy overhead traffic density on the El Paso division.

Overhead traffic does not contribute the same amount of revenue that originated and terminated traffic contributes, and in fixing rates based upon traffic density, the density of overhead traffic is not given as much consideration as given to traffic density of originated and terminated traffic.

The T. & N. O. reaches practically every large city in the State of Texas other than up in the Panhandle section, and that particular section of the state. El Paso is the only town of any importance west of San Antonio in Texas.

Cross-examination.

By Mr. Tedrow:

[fol. 894] My Exhibit C-213 shows the receipts in various counties and the expenditures, includes all freight, interline as well as local. It doesn't include any overhead. The figures in some respects are connected or have some relationship to through traffic. The freight division is at Carrizozo. The trainmen are paid at El Paso and that is charged against that particular division. The trainmen

handle through freight, but the statement of receipts in Exhibit C-213 does not take into consideration any through freight.

My Exhibit C-216 includes all livestock other than horses and mules.

Redirect examination.

By Mr. Thompson:

Exhibit C-213, the receipts shown represent the entire station receipts in the respective counties and also relate to shipments to and from points in other states, in other parts of the country. It also includes the portions of the freight charges collected that would go to connecting lines where they move on joint-line or through rates.

(Exhibit C-209 to Exhibit C-217, Witness Seggerson, were received in evidence.)

C. H. PISTOR, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Outlaw:

I am employed by the Missouri-Kansas-Texas lines as chief clerk to the assistant general freight agent in charge of the defense of Interstate Commerce cases.

[fol. 895] My testimony deals chiefly with the rates from Oklahoma points to the Missouri River—that is, Kansas City and St. Joseph, Mo., two points—and from Oklahoma points to Oklahoma City, Okla.

Exhibit No. C-218 is a map of the southwestern states. The heavy red line is the route of the Missouri-Kansas-Texas lines. Attention is called to the stations in Oklahoma indicated in blue as these are representative origin points used throughout my exhibit to cover the state of Oklahoma.

Exhibit No. C-219 shows the short-line distances from these 11 Oklahoma points referred to Kansas City, Mo., and St. Joseph, Mo., together with the routes via which such distances are constructed.

Exhibit No. C-220 is a statement of the present rates on horses and mules from these Oklahoma points to Kansas

City, Mo., St. Joseph, Mo., and also the rates proposed by the carriers in this proceeding, these proposed rates being based upon the column 45 rates fixed by the Commission between these points—these Oklahoma points—and Kansas City and St. Joseph. The present rates are based upon the docket No. 12358 scale which applied via the short-line distances, with three lines as a maximum.

We feel that the present scale of rates based upon Docket 12358 is too low for application upon horses and mules between points in the southwest, and offer Exhibit No. C-221 in support of this belief. The exhibit compares the minimum revenue per car on horses and mules under the [fol. 896] 12358 scale for distances of 50 miles up to 600 miles in 50-mile blocks, with minimum revenue accruing to the carriers for similar distances on commodities on which the Commission prescribes specific commodity rates in I. C. C. Docket 13535. In considering this exhibit it is important to compare—bear in mind that it is based on the minimum weight, and that the actual loading of horses and mules is but slightly over the minimum weight, while on a number of other commodities listed, the average loading is considerable in excess of the minimum weights. For example, the minimum on horses and mules is 23,000 pounds.

For the year 1927 the average loading on horses and mules via the M-K-T lines was only 23,320 pounds, while brick, for instance, loaded 71,600 pounds over our line against the minimum weight of 40,000 pounds. Iron and steel articles loaded 69,760 pounds, against the minimum weight of 40,000 pounds, and canned goods loaded 48,720 pounds, against the minimum weight of 36,000 pounds. Of course, the actual average earnings per car of the carriers on all these other commodities is considerably more than shown on the exhibit, while the actual earnings on horses and mules per car is approximately the figure given.

Further illustrating the level of the present and proposed rates and the earnings per car and per car mile is exhibit No. C-222, which shows these figures on horses and mules, and also on other commodities moving between the Oklahoma points previously named and Kansas City, Mo. [fol. 897] An examination of this exhibit clearly indicates that the present earnings are exceedingly low and that the earnings based upon the proposed rates are entirely in keeping with the per car revenue on the other commodities.

Dealing with the rates between Oklahoma points, I direct

attention to Exhibit No. C-223, which compares the present Oklahoma state scale, single and joint line, with the scale prescribed by the Interstate Commerce Commission in Docket No. 12358, single and joint line, and the scale here proposed by the carriers for either single or joint-line application. The Oklahoma state scale is published in dollars and cents per car of 35 feet 6 inches in length, while the rates under the I. C. C. Docket 12358 scale, and the carriers' proposed scale are published in cents per 100 pounds. The figures per car based upon the 12358 scale and carriers' proposed scale are based upon a minimum weight of 23,000 pounds, this being the minimum for a 36 foot car, being the minimum weight proposed in connection with the rates of the carriers. That was also the minimum under the 12358 scale. The present Oklahoma state rates and the proposed rates of the carriers are more clearly set forth in contrast in Exhibit No. C-224, which shows specifically the rates from 10 of the Oklahoma origins to Oklahoma City, Okla., this being the usual destination of the horse and mule traffic in that state.

The present rates on horses and mules in Oklahoma are [fol. 898] extremely low, as is evidenced by Exhibit No. C-225 which compares the rates and earnings per car with the rates and earnings per car on other commodities moving within that state on the intrastate rates there in effect. The usual level of the class and commodity rates in Oklahoma is below that for interstate application and the carriers have petitioned the Oklahoma Commission for authority to apply the 13535 basis within that state. Were the Interstate Commerce Commission to prescribe or to approve the scale which the carriers should apply between the points in the southwestern states, the present low scale in Oklahoma would tend to discriminate against interstate traffic. To illustrate this situation I have prepared Exhibit No. C-226. I took a representative origin point nearest the southern, eastern, northern and southwestern border of Oklahoma and show the short-line distance to Oklahoma City, together with the present rates. Then in comparison I showed the rate from a representative nearby interstate origin point in the adjoining state and showed the short-line mileage and the rate proposed by the carriers to Oklahoma City. From the slight difference in the distance and the substantial difference in the rates, it is apparent that

the present Oklahoma rates would militate against the application of such a scale as the carriers propose for application on interstate traffic. It is our position that the same rates should apply on Oklahoma state traffic as on interstate [fol. 899] traffic, not only on horses and mules, but on classes and commodities generally, and as I have stated before the carriers have already petitioned the Oklahoma Commission for authority to apply the 13535 basis within that state.

My exhibit No. C-227 shows the average revenue loading on horses and mules over the M.-K.-T. system or the five years from 1923 to 1927, inclusive, and in comparison the average loading on other representative heavy-moving commodities. It will be noted that horses and mules loaded only 44.7 per cent of the average carload weight of 52,220 pounds for our system in 1927. It will be seen also that while the average weight on all commodities increased from 51,340 pounds in 1923 to 52,220 pounds in 1927, the loading on horses and mules decreased from 23,440 to 23,320 pounds in the same period.

My Exhibit No. C-228 indicates also that so far as the M.-K.-T. lines are concerned, the ratio of claim payments to revenue on livestock is considerably higher than the ratio on commodities other than live stock.

We are anxious, of course to have the Commission prescribe whatever scale is prescribed for application on our line between points in Oklahoma, Texas and Kansas and points in Missouri north of the Rock Island, in so far as it is necessary to clear the rate to St. Louis under the 4th section. In other words, we hope to participate in the rate to and from St. Louis. There is no movement of horses and mules to or from stations on our line north of Windsor [fol. 900] where we cross the Rock Island in Missouri, and it is therefore not material whether a group arrangement is observed to and from those stations, or whether the mileage scale would be applied, but I simply mention this because in the 12358 scale that part of our line running along the north bank of the Missouri River from Boonville to St. Louis was omitted.

Examiner Carney: Now the modification or proposed basis of rates you suggest, that doesn't take in your lines from Boonville over to Hannibal, does it.

The Witness: No, sir; we don't have any interest in that except in so far as traffic in western trunk line terri-

tory is concerned, for which a scale will probably be introduced by the western trunk lines, but not so far as traffic to and from Oklahoma and Texas is concerned, and I believe that is what you have in mind.

We are willing to apply either the 45 per cent rate basis on the grouping published in the territorial directory No. 2 of the southwestern lines under Docket No. 13535, or apply the mileage scale so long as we may participate in the rate to St. Louis and have proper 4th section relief to those intermediate points.

(Exhibit C-218 to Exhibit C-228, witness Pistor, were received in evidence.)

Cross-examination.

By Mr. Tedrow:

I understand from Docket 12358, the Commission's own report, that the Oklahoma rates were involved under Section 13, I believe, and that is why I introduced these figures [fol. 901] with respect to the Oklahoma rates. We believe on Oklahoma state traffic the Oklahoma intrastate rates ought to apply. I think it would be discriminatory, for example, to have a low rate applying between points in Oklahoma and a considerable higher rate applying from point just across the border, but that is the general statement.

Exhibit C-222, pages 2, 4, 5 and 6, the earnings per car and per car mile shown here are figured via these short line distances and are based upon the mileages, via these short line distances. The application of the rates on horses and mules and on these commodities indicated here are similar, and consequently any variation in the distance between these Oklahoma points and Kansas City would be uniformly reflected throughout the earnings per car mile on horses and mules and the commodities which I have shown. The earnings would be lower than those which I have indicated because the distance over which the rate normally applies is greater.

In connection with my Exhibit No. C-228 covering average figures per car on loss and damage claims, particularly as to horses and the balance of livestock, I haven't those figures with me. Ordinarily in preparing our figures showing the claim payments on livestock we do not segregate

cattle and calves from horses and mules or other livestock. They are available, of course, through our claim department, and we make these studies only when we make a point of differentiating between the horses and mules and other kinds of livestock. I don't know off-hand what proportion of this per cent would apply to horses and mules.

[fol. 902] C. A. CASLER was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Outlaw:

I am assistant general auditor at Chicago in charge of statistics, of the Santa Fe System Lines.

My testimony will deal largely with Mr. Pelton's Exhibit No. C-168. On page 1 of Mr. Pelton's Exhibit C-168 is shown a photographic reproduction of a statement furnished to Judge Cowan, covering freight and car performance and unit cost of freight operation for certain divisions on the Atchison-Topeka & Santa Fe Railway Lines for the years ending June 30th, 1915, and December 31, 1924. Those figures were taken from our performance statistics and unit cost of freight operations, which are compiled monthly by operating divisions and also for each year.

The purpose of this report of performances of statistics and unit cost of freight and passenger operations is to make available to the operating officers and others concerned the information pertaining to the cost of handling traffic on the different operating divisions for the purpose of comparison from month to month and from year to year. This is for the purpose of ascertaining relative costs. The report includes all traffic revenue and non-revenue, and the comparisons one period with another for the same division furnished the information that is considered important. A comparison of one division with another division is not considered of any particular value for the reason that conditions on the different divisions are not the same, and the conditions that might obtain on one division would be different on another division, and therefore reflect different costs, and the comparison of the costs on the two divisions, accordingly, would be of no value.

Mr. Outlaw: At this point I would like to have in-
[fol. 903] troduced Defendant's Exhibit C-229, which is the Santa Fe System map.

The Witness: On page 2 of Pelton's Exhibit No. C-168 is shown information taken from that shown on page one for the divisions listed, except that these divisions have been grouped to bring out certain territories. The Pecos, Plains and Slaton divisions are here included in the first group. Under the second group, the northern and southern divisions. The third group, western, Panhandle, Oklahoma, Colorado, New Mexico and Arkansas River divisions; and the fourth group, Illinois, Missouri, eastern and middle divisions. This grouping, as indicated by page 5 of the same exhibit, is intended to bring out for the first group the differential lines or divisions. The second group, Texas common point lines or divisions. The first group, designated as the divisions in the differential territory has very substantial and important mileage in Texas common point territory. The Pecos division is the line between Belin and Clovis, New Mexico, and between Clovis and Pecos, Texas, including the branch line of the New Mexico Central, extending northward and southward from Williard. This is in differential territory, so far as this case is concerned. From Clovis to Belin is main line track, upon which our heavy transcontinental traffic moves. Transcontinental overhead traffic supplies the principal tonnage and ton miles covering the movement over that portion of the line. It is
[fol. 904] one of the heaviest density pieces of track west of Empora.

The Plains division covers the line from Clovis, New Mexico to Waynoka, Oklahoma, with the Spearman branch and Buffalo branch from Waynoka to Buffalo and the Borger branch, which is a continuation of the transcontinental line, and carries also the heavy transcontinental traffic. The line from Canyon Junction to the Oklahoma-Texas state line is in Texas common point territory; that represents 142 miles in common point territory and 83 miles in other territory.

The principal oil fields served by the Plains division are those near Borger, or in that general territory. The haul to and from that general teritory would be largely through Texas common point territory.

The Slaton division is that part of the line extending from Farwell, or Texas-New Mexico state line, near Clovis, to Sweetwater, and also the line from Canyon Junction to Lubbock Junction, and also the Floydada branch, Bledsoe branch, Crosbyton branch, Seagraves branch, Lamesa branch. The only part of the main line of this division that is in differential territory is that extending from Farwell, Texas-New Mexico state line to Lubbock Junction. All of the branch lines are in differential territory, except the line between Canyon Junction and Lubbock Junction.

The volume of traffic moving over the main line in differential territory from the Texas-New Mexico state line [fol. 905] through to Lubbock Junction is a part of the transcontinental traffic, and therefore the heaviest traffic on the Slaton division. The traffic on the branch lines, and of course represents the originating and terminating traffic only, and is relatively light or unimportant as compared with the through tonnage.

A check of my records, I found there were a great many errors in the computations Mr. Pelton placed in his exhibits.

Mr. Outlaw: I would like to state at this time that a check of our records has shown that the percentages of main and branch-line and common-point and differential territory, as related to these three divisions, computed by Mr. Pelton, are inaccurate in a number of instances, and I had intended asking Mr. Casler to write in the record the correct mileages and percentages, but that is rather involved, and would be more satisfactory to all parties if put in the form of an exhibit, so if the Examiner will give me permission so to do, I will file that as an exhibit within ten days.

The Witness: On page 2, Mr. Pelton in bringing out his district averages for the divisions, as grouped, does not have the data that is necessary to bring out the true weighted averages.

On page 1 of Mr. Pelton's Exhibit No. C-168 it will be noted that we furnished only the unit costs and certain performances pertaining to these individual divisions, and did not furnish the statistical units or expenses from which they were computed. In arriving at his district averages, [fol. 906] shown on page 2 of his exhibit, he merely totals the number of items and divides by the number of items involved, thus bringing out an average that is not weighted, and is therefore incorrect and of no value.

To obtain the correct average cost per 1,000 gross ton miles for two or more divisions it would be necessary to have the total operating expenses and the total gross ton miles of each of those divisions.

I believe that will take care of everything, provided we file an exhibit showing the errors and discrepancies that are included on page 5 of Mr. Pelton's Exhibit No. C-168.

(Exhibit C-229, witness Casler, was duly received in evidence.)

No cross-examination.

G. A. Ryser, was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Outlaw:

I am employed as assistant general freight agent of the Texas & Pacific Railway, Dallas, Texas. My testimony will deal particularly with rates to and from Texas differential territory.

As explained by the other witnesses, traffic to and from Texas differential territory, which on horses and mules on the Texas & Pacific Railway is west of Big Spring, Texas, a special differential is to be added to the common point [fol. 907] rate to determine rates to and from that territory, and my exhibits will tend to prove the reasonableness of those rates for that territory.

Exhibit No. C-230 is a statement showing the movement of horses and mules as compared with cattle on this portion of the Texas & Pacific Railway for the period January 1, 1925, to May 1, 1926, inclusive. The total number of horses and mules received and forwarded to those points was 158, while the cattle number is 3015. This ratio is somewhat the same as on the entire line, as in the year 1927 the Texas & Pacific Railway handled 1542 cars of horses and 15,015 cars of cattle. In 1926, 1,040 cars of horses and 13,426 cars of cattle. In 1925, 1406 cars of horses and 12,936 cars of cattle. In 1924, 1018 cars of horses and 14,267 cars of cattle. In 1923, 1182 cars of horses and 12,284 cars of cattle.

Exhibit C-231 is a statement showing the average weight and the number of cars of commodities, which I will use in later statements, showing the weight and the number of cars for the first six months of 1928. These figures will be used in my later exhibits.

Exhibit No. C-232 is a statement comparing the net and gross revenue per car mile under the carriers' proposed rates on horses and mules per carload from Midland, Tex., to points such as St. Louis, Kansas City, Wichita, Little Rock, Memphis, Vicksburg and New Orleans, with the rev-
[fol. 908] enue on other commodity rates prescribed by the Commission in Docket 15,535 and other proceedings as shown.

Exhibit No. C-233 is a statment, selecting a point west of Big Spring and west of Midland, Kent, Texas, as the origin, using the same destination and comparisons as Exhibit No. C-232.

Exhibit No. C-234 is a comparison similar to Exhibits No. C-232 and C-233, using as the origin El Paso, Texas.

Exhibit No. C-235 is another exhibit of similar nature. However, the origins shown in this exhibit are Midland, Kent and El Paso, Texas, and the destination Fort Worth, Tex., and in this connection I might say at this point that Texas carriers feel that the same figures should apply intrastate as interstate. That carries with it the addition of the arbitraries for the differential territory.

I now desire to submit a series of exhibits or staements relating particularly to the difference in conditions from a traffic standpoint as between the sections of the T. & P. Railway east of Big Spring, Tex., the western boundary of the common point territory and the eastern boundary of the differential territory, and the section west of that point. That the situation might be more easily followed by the Examiner and the Commission I desire to submit in evidence as Exhibit No. C-236, a map of the Texas & Pacific Railway and its connections which, if followed, will make the subsequent exhibits more easily understood. The [fol. 909] T. & P. and its subsidiaries are shown in heavy black lines. Various connections of the T. & P. are shown in lighter black lines, the Missouri Pacific being the principal connection of the T. & P. north and east of Texas, it is shown in a black line which is somewhat heavier than the other connections but which is not as heavy as the line

representing the T. & P. and its subsidiaries. The differential territory is west of Big Spring on the T. & P., San Angelo on the Orient San Antonio on the T. & N. O. The mileage of the T. & P. in the differential territory is 347 miles. The total mileage of the T. & P. proper at the present time is 2015 miles.

That the subsequent exhibits may be understood, the differential territory is included in what is known from the operating standpoint as the Rio Grande Division of the T. & P. This division extends from El Paso eastward to Baird, Texas, a distance of 474½ miles. The other divisions of the T. & P. in Texas were known in the years 1917, 1918 and 1919 as the Eastern and Ft. Worth divisions, the Eastern division being the main line from Texarkana through Marshall to Ft. Worth, and this includes, so far as the subsequent statements are concerned, the Louisiana division between Marshall, Tex., and the Louisiana State Line at Waskom, Tex.

The Ft. Worth division in those years included the Texas line from Texarkana to but not including Baird, operating through Paris, Sherman and Ft. Worth. In the exhibit for the years subsequent to 1919 the portions of lines are [fol. 910] shown without reference to the operating divisions, accordingly no further explanation appears necessary. I think that as the above points are plainly shown on the map which I have introduced, it is clear just what portions of the line are included in the description of the different divisions or sections of the T. & P.

Incidental to the differential territory situation, we have testimony to be presented by a later witness to show the difference in transportation and operating conditions from the transportation and operating standpoint.

At this point, it might be well to remark that considerable evidence was presented by the respondents in I. & S. Docket 2389, showing the relative conditions in common point and differential territory, and I am only attempting to bring these matters up to date and supplement same. The evidence previously submitted should also be considered.

Mr. Thompson: As I understand, right there, inasmuch as I. & S. Docket 2389 has been reopened for the purpose of this hearing, I understand the evidence and ex-

hibits in there are as much available in this case as if they had been put in this record, and we will omit this and avoid cumulative evidence.

Examiner Carney: They are and will be part of this record.

The Witness: (Resuming): Exhibit No. C-237 shows the number of loaded cars received at and forwarded from [fol. 911] Texas and Pacific stations in Texas during 1926. Again the lightness of traffic to and from stations in differential territory is indicated, the carloads received at these stations being only 7.4% of the total carloads received at the T. & P. stations in Texas and carloads forwarded from these stations being only 5.7% of the total carloads forwarded from the T. & P. stations in Texas.

Exhibit No. C-238 consists of 2 pages and shows the less than carload tonnage handled during 1926. Again the showing is similar to exhibits submitted at the previous hearing.

Exhibit No. C-239 consists of 1 page and shows the net ton miles and net ton miles per mile of line, on the T. & P. by districts, for the year 1926. This statement includes all traffic handled by the T. & P. Railway. Again the showing is that the differential territory has a materially less density of traffic and accordingly there is a different situation in that section as compared with the common point territory.

Exhibits previously submitted in I. & S. Docket 2389 show the number of tons received and forwarded per mile of road was 7058.8 tons. On the Rio Grande division there were 1464.9 tons. On the portion of the Rio Grande division in common point territory there were 2137½ tons and on that portion in differential territory there were 1221½ tons per mile of road.

They show that on the eastern division during the year [fol. 912] 1918 there were 315.9 cars, and in 1919, there were 374.4 cars per mile of line. On the Rio Grande division in Common point territory, there were 89.9 cars in 1918, and 1919 there were 115.5 cars, whereas in differential territory only 49.8 in 1918, and 42.2 cars in 1919.

They further show that in the year 1922 the number of cars to and from points in differential territory amounted to 36.8 cars per mile of line.

Exhibit No. C-237 shows that in the differential territory during the year 1926 there were only 42.25 cars per mile of

line, whereas on the division Texarkana to Ft. Worth via Marshall, there were 568.23 cars per mile of line. In connection with this statement, it will no doubt be of interest to know that during 1926, on the first 153 miles of differential territory line west of the common point line there originated in the 12 month period 3,176 cars. Out of this there were 2576 cars loaded with cattle. On the next section of 102 miles between Toyah and Allamore, 694 cars originated 636 of which consisted of cattle. On the third section, from Sierra Blanca to Ysleta, of 86 miles, there were 238 cars of cattle out of total of 817 cars. On this section, there were also 271 cars of fruits and vegetables, 18 cars of hay, 73 cars of gravel, sand and stone, and the balance of miscellaneous articles.

Further, it no doubt will be of interest to know that out of 6,559 cars originating in the differential territory on the T. & P. 3,509 cars, or in excess of 50%, consisted of cattle, [fol. 913] 640 cars consisted of cement from El Paso, 71 cars consisted of cottonseed and cottonseed products, 136 cars consisted of hay, and 376 cars consisted of ore and related articles, the balance being miscellaneous commodities.

At a recent hearing question was brought up as to the data not including the loaded cars and LCL tonnage received at and forwarded from stations on the T. & P. in Texas, during the year 1927, it being claimed that the year 1927 would result in a material change. We agreed to and furnished the Commission, in connection with I. C. C. Docket 15028, statements of the loaded cars and LCL tonnage received at and forwarded from stations on the T. & P. in Texas during the first 9 months of 1927, as reported by station agents.

The data on these statements, similar to previous statements for the other years, was segregated by operating divisions and indicate the small density of traffic originating or destined to points in the differential territory. The differential territory of the T. & P. approximates one-third of its mileage in Texas.

Exhibit No. C-240 shows the loaded cars received at and forwarded from stations on the T. & P. during the first 9 months of 1927.

Exhibit No. C-241 shows the L. C. L. tonnage received at and forwarded from stations on the T. & P. in Texas during the same period.

[fol. 914] Both of these statements show that relatively the movements to and from points in differential territory is materially less than to and from the other sections of the line.

Something has been said in this and other cases also as to oil field development. We are inclined to feel that the benefit to a railroad of oil field developments has been considerably over-estimated. It is true that these oil fields during development or flush production period, produce considerable amount of freight, but it is also true that this development, as will be explained by our Engineer, Mr. Waggener, results in the carriers having to go to considerable expense to take care of the peak load, which according to past experience diminishes and leaves the carrier in possession of tracks and other facilities in excess of the subsequent necessities.

As illustrating the situation, I have in mind the experience at Ranger, Tex., at which station, during the oil development in the years 1918 and 1919 a very large yard was constructed during the period of Federal control, which subsequently was taken up, as the large facilities needed during the peak years of 1918 and 1919 and 1920 were not needed thereafter. This is illustrated in statement 22, which I now offer in evidence as Exhibit No. C-242. It shows the gross freight charges on traffic into and out of Ranger, Tex., during the calendar years from 1918 to 1927, inclusive. During the peak year, 1919 the statement shows that freight charges amounting to ap- [fol. 915] proximately $7,500,000.00 were collected on traffic moving to and from Ranger, whereas in the year 1927, the freight amounted to only $985,942.71, or less than 1/7th of the freight charges collected during the peak movement. There is every reason to believe that freight charges on traffic to and from other oil fields will experience a similar rise and decline.

The north and south lines cross the Texas & Pacific Railway on the Denton division in seven places at least, as shown on the map, Exhibit No. C-236, and along those lines, while it may be a less density line than the main line, it would be impossible for us to carry higher rates on that line in view of the fact that other north and south lines intersect us with main lines which hold down the rates to those points, and they are included in common

point territory, which, of course, forces the Texas & Pacific Railway to keep those points on the lower level of rates, and for that reason the rates that apply on traffic moving from the Denton division cannot be based upon operating costs, but upon competitive conditions.

(Exhibit C-230 to Exhibit C-242, Witness Ryser, were received in evidence.)

B. M. GILLESPIE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Outlaw:

I am chief clerk of the freight traffic department of the [fol. 916] Atchison, Topeka & Santa Fe Railway Company, at Topeka, Kansas.

Exhibit No. C-243, consisting of one page, which shows the present rates on horses and mules, also other moving commodities, between points in Kansas and Oklahoma City, Okla. There is one correction which I desire to make on this exhibit. In the second line of the heading I show the third word from the left-hand side "from" should be "between," and the words "also to Kansas and Oklahoma," should be changed to read, "and."

The present earnings and rates shown on horses and mules on the left-hand side are the rates prescribed by the Commission in Docket 12358, and on the right-hand side of this exhibit I have shown the proposed rates based on the carriers' proposal in this proceeding. Also the earnings per car per mile. I believe this exhibit is self-explanatory, and I will not make any further comments, only to say that while we have only shown Oklahoma City as a destination or origin in Oklahoma, I could have used numerous other points where we could have got the same relative results. It is also my understanding that there is only one horse and mule market in Oklahoma, which is Oklahoma City.

The mileage is shown in the first column, with the reference marked to the routes 1, 2 and 3 and so forth, the routes shown below are the ones that protect the mileage.

Also I wish to point out, Mr. Examiner, that the dis-
[fol. 917] tances shown are figured on the formula prescribed by the Commission in Docket 13535, which is the same formula which the carriers are proposing in connection with our proposed rates. This is equally true with the rest of my exhibits.

I have taken the shortest possible distance between the points designated on the exhibit.

The present rates from Hutchinson to representative points apply over routes not to exceed three lines. Now, taking up the question of rates on horses and mules, carload, from, to and between points in New Mexico on and east of the main line of the Santa Fe running north and south through Alburquerque and Belin, and including the branch running west from Rincon, N. M. The actual rate I have shown in cents per hundred pounds is the effective rate in effect between the points shown on the exhibit but I have tried to bring out that the distance I have shown is the multiple system of figuring distances as prescribed in 13535.

The Southwestern carriers have proposed for application at this hearing to, from and between points in the Southwest, column 45 of Docket 13535 scale as prescribed by the Commission in the so-called Southwest, plus differentials for the haul in Texas differential terrtory.

The New Mexico lines likewise respectively request the Commission for establishment of the column 45 Southwestern 13535 100 per cent scale, plus the carriers' proposed differentials for application from, to and between points [fol. 918] in New Mexico. The Commission originally prescribed differentials on horses and mules for application in New Mexico in I. & S. Docket 2389, 102 I. C. C. 87, and I also wish to point out to the Commission various decisions in which the carriers have been given higher rates for haul to New Mexico which are applicable to the territory in the Texas differential territory. Docket 12976, 74 I. C. C. 223, commonly known as the Cactus case, 15027, 17292, Docket 14150, Docket 14451, Docket 16978, and Docket 16022.

The operating conditions in New Mexico are more severe than in Oklahoma, Texas, etc., with the exception of the Texas differential. Scarcity of local tonnage, water conditions, and population, which are well-recognized facts

by the Commission and has been given consideration in the cases above cited. In fact in our last analysis from the Rand-McNally Atlas for 1927 the estimated population of the state of New Mexico for the year 1925 was 391,-932. The Federal Bureau of Estimates of July 1, 1926, was 380,146, or a loss in population, 1926 and 1925. We feel that differentials should be added and that the proposed differentials of the southwestern lines for haul from Texas differential territory should be likewise approved and made applicable in connection with the traffic to or from New Mexico.

Exhibit C-244 consists of one page, which is similar to my previous exhibit 243, showing the same information. [fol. 919] The rates I have shown on this exhibit, with the exception of the right-hand column, have been prescribed by the Commission in various cases. It will be noted that the proposed earnings per car mile are less in most instances than the earnings on the other commodities as shown.

Now, I wish to take up the question of rates in Kansas intrastate traffic which are involved in this proceeding, as the hearing was held jointly with the Commission and the Interstate Commission in Docket 12358 in Topeka, in 1925, which we understand partly resulted in the reopening of this present hearing.

In going back over our records as far as 1896, we find that the rates on horses and mules originally established for application between Kansas points, and from Kansas to Missouri River, were on a very low basis to take care of what was known as low-grade or range animals, but as the country developed and the stock improved, no change was made in the existing rates.

On May 29, 1909, the Kansas statutory maximum freight rates became effective which included rates on horses and mules. These rates in a good many cases were even lower than the low rates established by the carriers to move these low-grade range horses. These statutory rates remained in effect until they were increased under general order No. 28.

[fol. 920] Also 35 per cent increase as authorized in I. C. C. Docket 11916, 62 I. C. C. 440, and 64 I. C. C. 679, less reduction of July 1, 1922.

Exhibit No. C-246 consists of one page, which shows the movement in cars of horses and mules for the system for the years 1917 to 1927, inclusive, and shows that from 1917 that there was a decline in the number of cars until 1926, when there was an increase.

I now desire to introduce Exhibit No. C-247, consisting of one page, which shows the light loading of horses and mules as compared with other products of agriculture, products of mines, forests, manufactured products; also with the average car loading on all commodities with the exception of livestock and fresh meats which show an increase 1927 over 1917. This is clearly shown in the third column.

Santa Fe equipment at all times, including livestock cars, have increased in size in the past years, but the increased loading in livestock has not kept pace with the increase in carloads of other commodities. I wish to point out that the greatest increase was in connection with hides and leather which increased 129.5 per cent, and that the average increases on all carloads was 109.4 per cent.

As stated, one of the economic practices by the carriers was to increase weight loading per car. Unfortunately, the increase in the weight loading of horses and mules has not [fol. 921] kept pace with the increased loading of other commodities.

Exhibit C-248, consists of one page, which shows the loss and damage claim payments made by the Santa Fe system and the revenue earned, segregated as to horses and mules, livestock other than horses and mules, all freight traffic other than livestock and l. c. l. freight, and all l. c. l. freight, also claim payments on these various classes. In the last four columns we have indicated the per cent the loss and damage claim payments is to the revenue earned. I might also point out that for the year 1927 the average claim payments on shipments of horses and mules on the system was $2.36 per car. On livestock other than horses and mules, 95 cents per car, and on all carload freight except horses and mules and other livestock, payment was 73 cents per car.

The Commission has also set down for hearing carriers' 4th section applications 461, 462, 621, 673 and 678. Application 461 has been taken care of by 4th section order 9129. Application 462 was withdrawn by the Southwestern lines on October 26, 1926. Applications 621, 673 and 678 have been covered and are taken care of by 4th section

orders 9059, 9183 and 9711, which grants the present relief we now have in connection with rates on horses and mules as a result of the Commission's decision in Docket 12358. The carriers respectfully ask that if the Commission sees fit to authorize the application of the scale as proposed by them, that we be given the same 4th section relief [fol. 922] as granted by the Commission in connection with Docket 13535.

If the Commission doesn't see fit to authorize the basis as suggested, and prescribes a mileage scale, then the carriers respectfully ask that we be given the same 4th section relief as we now have in the three 4th section orders just previously mentioned.

(Exhibit C-248, Exhibit C-244, Exhibit C-245, Exhibit C-246, Exhibit C-247, Exhibit C-248, witness Gillespie, were duly received in evidence.)

Cross-examination.

By Mr. Tedrow:

In my Exhibit C-248 showing loss and damage separated out as between horses and mules and other livestock, and as to all carload freight, we have no way of separating the different species and kinds of livestock. I have been trying for the last five years to get such a statement, which I just succeeded in getting a short time ago. I don't know how the horses and mules were separated out. The claim department and livestock department had it for the last two years, but they do not segregate anything else. I don't think a fair comparison would be made by separating out the different species of animals.

Exhibit C-247, showing the loading of horses and mules and other freight for the years 1917 to 1927, we still have got a few 32-foot cars in service. They have been trying to get away from the use of these little stock cars, and as soon as they become obsolete they are scrapped and new large ones are put in service. We are trying continually to increase the size of our equipment. The increase in loading on horses and mules and livestock will depend largely upon the capacity of the cars. Our size cars has been increasing. [fol. 923] We propose to readjust the rate on horses and mules in the Southwest in line with the 13535 decision, and are asking the same fourth section relief that applies in

connection with the general scale. We are asking for the establishment of one scale in the State of Kansas, to be the same as the scale in Oklahoma. I want that scale to be the same as the scale that would apply beyond interstate to and from Texas differential points, outside of Texas differential territory.

It is my understanding that the 90 or 91 per cent Kansas-Missouri territory of which you speak was established more on account of the jobbing situation than anything else, and that same situation could not be applied to rates on horses and mules. To the one extent of Kansas intrastate traffic I am perhaps really getting away from the principle of the southwestern decision in my proposed rates on horses and mules. As to the interstate territory, that will be covered by another witness. I am speaking of Kansas intrastate and not Kansas to Missouri River. Another witness will cover Kansas to Missouri River and east.

In connection with fourth section relief, I was speaking for the whole southwestern line and not in connection with Kansas intrastate. My testimony goes to the whole territory involved in the southwestern lines' proposal and not altogether the Kansas intrastate. In my testimony, I covered Kansas, Oklahoma and New Mexico in addition to the Kansas state situation, but I am not covering any rates from Kansas to Kansas City or from Kansas to St. Louis.

On Exhibit C-248 the claim payments represent the actual payments that the Santa Fe made during the years 1926 and 1927.

[fol. 924] Mr. Outlaw: The revenue is the revenue accruing during the year for which the statement is, while the claims are the claims paid during that year, which may have arisen during that year or prior thereto, but the theory of it is that over a period of time, unless there is something unsual, which we do not know of, it will balance.

M. J. Dowlin, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Thompson:

I am assistant general freight agent of the Rock Island lines, Fort Worth, Texas.

In the fixing of freight rates there are certain elements which are recognized as warranting different rate levels on different commodities and different rate levels in varying zones or sections of the country. Among these possibly the [fol. 925] most important are distances, density or volume of traffic, and its general character. While overhead traffic is important, the more remunerative traffic, generally speaking, is local, that is, originated and terminated tonnage. As persuasive indication of local traffic possibilities in any given territory is density of population and industrial development.

Transportation conditions in West Texas differential territory and in New Mexico are distinctly less favorable than in Oklahoma, eastern Kansas and Texas common point territory. Generally speaking, Texas differential territory and New Mexico are semi-arid and sparsely settled. Residence and industrial development in that section of the state is in its infancy.

Exhibits No. C-249 and C-250 are county maps of the States of Kansas and Oklahoma, on which I have inserted in each county the average population per square mile, per fourteenth census of the United States, 1920. Believe that these two exhibits are self-explanatory and indicate very graphically the decrease in population from the eastern border line of the two states in question westward and that further comment is unnecessary.

Exhibit C-251 is a similar map of the State of Texas. For a great many years there has been maintained on practically all freight traffic to, from and between points in Texas, different levels of rates. In the eastern or more densely populated sections of the State, a lower level has [fol. 926] prevailed than in the western part thereof. On map Exhibit No. C-251 there is indicated by a line drawn from a point just west of Higgins on the P. & S. F., located in the Southeast corner of Lipscomb County, in a southeasterly direction, to a point just west of Corpus Christi on the Gulf of Mexico, the approximate Texas common point line prescribed by the Interstate Commerce Commission in the Consolidated Southwestern Cases, docket 13535, except the line as shown on this Exhibit crosses the T. & P. Railway just west of Big Spring in Howard County, whereas the line as fixed by the Interstate Commerce Commissison in the above proceeding crosses the T. P. just

west of Midland, some 40 miles west of Big Spring. That change was made in the supplemental report of the commission in the 13535 cases, and the carriers now have pending before the Commission, among other things, the request that the boundary line be restored to Big Spring.

There are some exceptions to this general division of the state, there being some portions of lines operating east of this differential line as to which the addition of differen-t-als are authorized, such as certain portions of lines of the Santa Fe, F. W. & D. C. and Q. A. & P. General- speaking, however, the territory east of that line has always been the heaviest traffic density territory in the State of Texas, where the flat Texas scales apply without the addition of differentials. In the territory west of this line a higher level of rates has prevailed, arrived at by adding to the [fol. 927] Texas common point rate certain fixed differentials, these differentials usually being graded upon a distance basis. The Railroad Commission of Texas has, from time to time, extended the Texas common point rate westward, particularly as to the territory on and north of the T. & P. Railway running from Cisco to El Paso.

The Texas common point line observed in connection with interstate traffic has not always corresponded with the differential line established by the Railroad Commission of Texas. The Interstate Commerce Commission in its supplemental report in the Consolidated Southwestern Cases, 144 I. C. C. 630, adopted in the Southwestern Cases substantially the existing Texas Commission differential line.

Exhibit No. C-252 consists of 11 pages. Pages 1 to 10 inclusive are, in reality, work sheets detailing the calculation indicated on page 11. On pages 1 to 9, inclusive, are set forth the area of Texas in square miles, the population by counties for 1910, 1920 and 1927. The figures for 1910 and 1920 are taken from the two United States Census Reports of those dates, while the 1927 figures are taken from the 1928 Texas Almanac, and are based on the percentage of increase in scholastic population 1920 to 1927, applied to the population of 1920. I have used 1927 figures in summary on page 11.

Sheets 1 to 10 inclusive also show the Railroad mileage and the average number of persons per mile of railroad in the various counties of Texas, the railroad mileage shown [fol. 928] being that set forth in the annual report of the

Comptroller of Public Accounts of Texas for 1927, except for the counties shown on page 10 of the exhibit. The Comptroller's Report of 1927 does not show the railroad mileage in the counties named on page 10. The figures shown thereon were obtained by check of railroad tariffs and mileage circulars and are, I believe, substantially correct.

On this exhibit I have shown the Texas counties situated west of the red line on Exhibit No. 251, on page- 1, 2 and 3, and the counties east of the red line mentioned on pages 4 to 9, inclusive, separately, pages 1 to 3 inclusive being referred to on page 9 as Section 1, and pages 4 to 9 inclusive as Section 2.

Page No. 10 shows the railroad mileage in the counties as to which that information is not sho-n in comptroller's report for 1927. Page No. 11 is a summary of the preceding pages for the year 1927.

This statement shows that approximately 43.2 per cent of the State of Texas lies west of the red line appearing on Exhibit No. 251, but this 43.2 per cent of the area of the state contains only 11.8 per cent of its total population. It further shows while differential territory has only 11.8 per cent of the population of the State, that territory has 19.8 per cent of the total railroad mileage and an average of only 5½ persons per square mile, while common point territory, with practically ⅘ths of the state's railroad mile-
[fol. 929] age, have an average of 31.7 persons per square mile to patronize the transportation facilities.

The portion of Texas lying east of the differential boundary line is much more developed and more densely populated, from the standpoint of railroad mileage, than the territory to the west thereof, and in some measure would account for the showing Mr. Pelton made as to the greater amount of railroad construction in the last few years in differential territory as compared with common point territory.

The undeveloped portions of Texas, or the portions of Texas least in development, generally speaking, lie west of that differential line, and as the country settled up it is in need of transportation in order to enable them to get their production, agriculture, manufacturing, or otherwise, to market. It is worth nothing to them unless they can get it to market.

It is impossible to pick out with any degree of accuracy certain spots east of that line and make the explanation which I have endeavored to make here. I have endeavored to show the general division of Texas common point territory from differential territory and explain in my preliminary statement with reference to this exhibit that there were certain lines east of the red line drawn on this map which were authorized to add differentials to their bastic rates.

Mr. Thompson: In order to make that clear, Mr. Examiner, I refer you to Mr. Casler's map exhibit, in which he [fol. 930] has shown certain lines extending east of these general differential boundary lines shown by Mr. Dowlin on his map, and in addition there are certain lines of the Wichita Valley extending to Spur, on which differentials are being applied on certain traffic, and also the new line of the Ft. Worth & Denver City, extending from Estelline westward to Plainview and Lubbock and Dimmitt and Silverton, but as Mr. Dowlin has explained, he just took a general dividing line and did not attempt to follow these other ramifications where the short lines extend to other differential territory east of that line.

The Witness: Exhibit No. C-253 is a like map of the State of New Mexico, on which I have noted on the various counties figures indicating the population per square mile in the various counties of that state. Also as per census of 1920 there are 122,503 square miles in the State of New Mexico, with a population of 360,350 persons, giving it an average of 2.9 persons per square mile for the entire state. The most densely populated county is Bernalillo County, with an average population of 24.6 persons per square mile. Albuquerque, the largest city in New Mexico, of some 15,000 inhabitants in 1920 is situated in this county.

Exhibit No. 254 is a statement showing the population of the various stations at points on our Panhandle lines and on the Rock Island in New Mexico as of December 31, 1927. This was obtained by our division freight agent by visit to the various points. The United States Census Bureau has [fol. 931] just released its estimate of the population of various cities of the United States as of July 1st, 1928, and it shows that Amarillo has a population of 39,200, a decrease of nearly 10,000 from what is shown. There is no

question but what the slump in the oil fields in the Panhandle has caused a decrease in population in Amarillo.

Exhibit No. C-255 is a statement of weight and revenue on less than carload freight received at stations on the Rock Island west of Amarillo for the years 1924 and 1925 and 1926. I have shown this because I consider less than carload freight handled at a station somewhat as a barometer of the traffic and of the importance of such stations.

In prior hearings before this Commission testimony has been submitted by complain-ts designed to emphasize the apparent heavy traffic density on lines traversing Arizona and New Mexico, and enlarge upon the fact that charts and similar computations show a greater number of tons per mile of line than on other important lines in more densely populated sections of the Country where there is concededly a greater general density of traffic on the whole. This is explained by the fact that there is a very large volume of traffic moving between the West coast and intermountain territory on the one hand and the section east of the Rocky Mountains on the other, and only a few lines traversing the States of Arizona and New Mexico from east to west, which throws all of this traffic into very few chan- [fol. 932] nels and increases the showing of tons per mile of line transported during a given period.

The Rock Island Line traversing the Panhandle of Texas and extending to Tucumcari and Santa Rosa in Northeastern, New Mexico, affords a typical example of the overhead traffic handled by the carriers traversing the States of New Mexico and Arizona. For the purpose of analyzing traffic on lines of which the Rock Island is typical, I obtained from the Auditors of the C. R. I. & G. and C. R. I. & P. Railways, respectively, statements covering the Rock Island Lines in New Mexico and Texas for the Calendar year ended December 31st, 1924, showing:

(1) The tons of revenue bearing freight handled on different sections of the lines mentioned for that year.

(2) Number of tons per mile of line.

(3) Number of tons 1 mile.

From the auditor of the C. R. I. & G. Railway, I obtained in addition to the foregoing the revenue yielded from the handling of the traffic referred to. I could not obtain this information from the Auditor of the C. R. I. & P. Railway.

Exhibit No. C-256 is a diagram of the Rock Island Lines in Texas and New Mexico. The legend on the diagram indicates the different sections referred to in the next exhibit.

Exhibit No. C-257, consisting of 2 pages, is a statement of the revenue freight traffic handled by the C. R. I. & G. lines in Texas and C. R. I. & P. in New Mexico during the [fol. 933] calendar year ended December 31st, 1924. On this statement various sections of the C. R. I. & G. and C. R. I. & P. are referred to, the mileage of the different sections being shown on the exhibit.

The southern division of the C. R. I. & G. railway is situated in Texas common point territory and reaches the important cities of Ft. Worth and Dallas. This particular section of the Rock Island is not the heaviest traffic density line in Texas common point territory, and on the other hand, it is not the lightest. I believe that the southern division of the C. R. I. & G. railway, that is, the lines south of Terral, Okla., is about the average of Texas common point territory as a whole with respect to traffic density. I have, therefore, for purposes of comparison, treated the southern division of the C. R. I. & G. railway as one hundred per cent to represent the average of the traffic density of Texas common point territory, and have shown on the Exhibit the percentage relation of the traffic on the other sections of the Rock Island to that on the southern division.

Will refrain from extended comments on this Exhibit, but trust I may be permitted to direct attention to certain features of it. In the first section of the exhibit is shown the number of tons originating on the different sections mentioned, the terminated and intermediate or overhead traffic being shown in the same manner in the other two [fol. 934] sections of the exhibit. For example, on our Amarillo division, the number of tons of originated traffic amounted to only 7 per cent of the number of tons originated on our southern division, although the mileage of these two divisions is practically the same. The percentage comparison is carried out to the number of tons per mile of line and the number of tons one mile. The terminated traffic on the Amarillo Division is only 37 per cent of the amount of traffic terminated on our southern division, while on our Mexico division the percentage of terminated traffic is only 26.8 per cent of the southern division terminated

traffic. Particular attention is directed to the very light originated and terminated traffic on our New Mexico lines. On the line between Glenrio and Tucumcari, the number of tons per mile of line of originated traffic is only 1.9 per cent of the southern division originated traffic per mile of line. The tons per mile of line of terminated traffic on that section of the line are only 5.2 per cent of the amount of southern division terminated traffic. However, when we come to the intermediate or overhead traffic, a vastly different situation is presented.

The intermediate traffic on our Mexico Division and also what is designated on this exhibit as the El Paso division, which is the line extending from the New Mexico state line, near Romero, to Santa Rosa, N. M., is vastly heavier, than the overhead traffic passing over our southern divi-
[fol. 935] sion. While the intermediate traffic on our Mexico and El Paso divisions greatly exceeds the intermediate traffic on any of the other divisions, attention is directed to the disparity in the earnings on intermediate traffic on our Mexico division when contrasted with the earnings on the intermediate traffic passing over our southern division. While the volume of the intermediate traffic handled on our Mexico division, if based on number of tons per mile of line, exceeded the volume of the intermediate traffic handled on our southern division by over 273 — cent, the returns from this vastly greater volume of intermediate traffic on our Mexico division were only 12.2 per cent greater than the revenue yielded on the relatively smaller volume of intermediate traffic handled over our southern division. The earnings per ton per mile on this class of traffic handled over our southern division were 17.7 mills, whereas the traffic of this character handled over our Mexico division returned only 12.2 mills per ton per mile, a difference of 5.5 mills. In other words, the pass-over traffic on our Mexico division pays, per ton mile, only 69 per cent of what similar traffic passing over our southern division yields. The originated and delivered traffic on our Mexico division and on our New Mexico lines is relatively unimportant. At the bottom of page 2 of this exhibit I have shown for both the Mexico and Amarillo divisions, the relative percentage to the whole of the traffic originated, termi-
[fol. 936] nated and passing over these divisions. Attention is directed to the fact that over 90 per cent of the traffic

handled on our Mexico division consists of intermediate or overhead traffic.

In addition to the usual disparity in the earnings on intermediate traffic as contrasted with originated and terminated traffic, intermediate traffic passing over our Mexico division is very largely made up of long haul trans-continental and inter-mountain traffic, a large number of lines participating in the haul, with a preponderance of relatively low-rated tonnage. The traffic composing the bulk of the overhead traffic handled on our Mexico division is made up very largely of fruits, melons and vegetables, including citrus fruits and cantaloupes. There is also some movement of livestock, principally from Arizona and New Mexico, eastbound, the bulk of which is destined to northwestern pastures, a considerable proportion going to the F. W. & D. C. at Dalhart. Some of the livestock traffic goes to pasturage and feed lots in the middle west. There is also a movement of ore to both Amarillo and Colorado points and a return movement of smelter products. The per ton mile and per car mile earnings on all of this traffic are relatively low—first, because of the inherently low rates applied on this long haul trans-continental traffic; second, because it is long haul traffic. The intermediate traffic passing on our southern division is of an entirely different character. [fol. 937] It is composed very largely of grain (of which the Rock Island originates a very great quantity) and grain products destined to relatively short haul points in Texas and to the Gulf ports and Rio Grande crossings for export; of comparatively high rated articles consumed and used in Texas, such as agricultural implements, iron and steel articles, stoves, canned goods, baking powders and staple commodities of a similar character. The bulk of this traffic, as before stated, is relatively short-haul traffic, terminating in Texas or going to the Gulf ports or Mexico border for export. Therefore, under the principle of decreasing per ton mile earnings with the increase in distances, which has been a principle almost universally followed heretofore in rate structure, the rates on the class of intermediate traffic handled on our southern division pay relatively higher revenue than the same commodities handled in overhead traffic over our Mexico division.

Exhibit- No. C-257 and C-258 is a statement showing the differentials provided by the Interstate Commerce Commis-

sion on various commodities in Docket 13535. There is also shown on this exhibit the Column 45 differential, which is the basis of rates proposed in this proceeding on horses and mules. This is shown to indicate that the Interstate Commerce Commission in its decision in Consolidated Southwestern cases recognized the fact that a higher basis of rates should prevail on commodities generally—on all com-
[fol. 938] modities which they treated in that proceeding in west Texas differential territory than in common point territory and the southwest east of the differential lines.

Exhibit No. C-259 consists of 6 pages, is a statement relative to loss and damage claim payments. Page No. 1 shows the record for the Rock Island lines for the years 1925, *1925*, 1926 and 1927. Page No. 2 is the same data for the Southern Pacific Company, Pacific lines, and covers the years 1920 to 1927, inclusive. Page No. 3 is similar data for the T. & P. Railway covering the years 1922 to 1927. Page No. 4 is a statement for the St. L. & S. W. Railway of Texas covering the years 1924 to 1926, inclusive. While page No. 6 is a summary of the preceding pages. This exhibit shows the revenue earned on horses and mules, carload, on live stock other than horses and mules, and on all carload traffic except livestock respectively, and claim payments on the same classes of traffic for the roads mention-, which, in the aggregate, covers a period of 23 years. I believe that this exhibit is self-explanatory and needs no further comment.

Exhibit No C-260, consisting of one page, is a statement showing the loss and damage claim payments on horses and mules for the Rock Island lines, Texas & Pacific and Southern Pacific lines per car. The years covered by the statement are indicated in column No. 1 on the left. The summary at the bottom shows the average payment per car
[fol. 939] upon the three lines mentioned for the period shown on the exhibit as $4.01 per car.

Exhibit No. C-261 consists of 2 pages. There has been some confusion in the minds of the various parties with whom I have discussed the former proceedings—the former hearings in this proceeding, with respect to the proposal made by the carriers for rates on horses and mules in the southwest. I have therefore thought it appropriate to show just what that proposal was. There was no proposal by the carriers made at any of the hearings. The proposal was made on briefs which were filed by the carriers, and is

dated at Chicago on March 11th, 1922. The proposal is set forth on pages 15 to 19, inclusive, appendix "A", of that brief. On page No. 1 of Exhibit No. C-261 I have shown the mileage scale which was proposed in the brief, except that in the brief the figures had not been subjected to the ten per cent reduction of 1922, whereas, I have made that reduction in the figures shown hereon. The proposal in that proceeding was for single line rates only. So far as the mileage scale is concerned, there was no proposal for joint line mileage rates. This did not include the differential territory.

On page No. 2 of this Exhibit No. C-261 I have shown another part of that proposal, which was submitted in the brief referred to. The portion of the brief referred to, submitting these figures, reads: "In I. C. C. Docket No. 13001 the carriers proposed the following rates for 36 foot car on [fol. 940] horses and mules." Then follows these figures. That was the end of the first quotation. Second quotation: "The west side carriers are therefore of the opinion that the figures proposed in I. C. C. Docket No. 13001 are reasonable and should be established to remove some of the alleged discrimination complained of in this case." That was really the gist of the proposal that was submitted in that proceeding.

Exhibit No. 262 consists of 1 page. On this exhibit I have shown for various distances the single line proposal proposed by the carriers, as indicated on Exhibit No. C-261, but I have also shown on there the Class B-9702 joint line scale, because the proposal as submitted was the 9702 single line Class B mileage scale, and therefore indicated the joint line in order that they might have an idea of what it would mean if a proposal had been submitted for both joint and single line mileage scales.

In column No. 3 of Exhibit No. 262 I have shown the Docket 12358 scale. All of these without differentials.

In column 4 I have shown an average or composite of column No. 2, single and joint line scale, and in column No. 5 have shown the Consolidated Southwestern Column 45 scale for similar distances in order to indicate a comparison, at least in a measure, of the proposal made on brief heretofore referred to, with the proposal made at this hearing.

In discussing Exhibit C-255, it appears from this exhibit [fol. 941] that in 1925 the volume of traffic, both as reflected

by the weight and revenue was less than in 1924 but in 1926 it was slightly greater than either in 1924 or 1925. The explanation of that is found in the fact that in 1924 there was a good grain crop in the Panhandle of Texas while in 1925 it was a failure, and in 1926 it went up again. It is simply a fluctuation that goes with the condition of the country from year to year.

On page No. 1 of Mr. Pelton's Exhibit No. C-169, under the heading "under construction number of miles" Mr. Pelton shows the C. R. I. & G. as 103 miles. I don't know where he gets these figures. As a matter of fact, there was constructed in 1927 57½ miles of the Rock Island north of Amarillo, the extension being from Amarillo to Stinnett. There has since been authorized by the Board of Directors construction of that extension to Gruver, approximately 30 miles north of Stinnett. This is the extent of the Rock Island under construction at the present time in the Panhandle of Texas.

On page 12 of the same exhibit, under heading "statement showing increased traffic density on principal Texas lines during period 1921 to 1925" Mr. Pelton shows the C. R. I. & P. Railway. The C. R. I. & P. has no mileage in the State of Texas, and I do not know where he got those figures from. The same comment is made with respect to page No. 13 of that same exhibit. The Rock Island line in Texas is the [fol. 942] Chicago, Rock Island and Gulf. There are two statements made by the C. R. I. & P. One of them includes the C. R. I. & P. proper. The C. R. I. & C. makes a statement, and then the C. R. I. & P. consolidates the two and makes the Rock Island lines statement, which is known as the system, and these figures really represent the C. R. I. & P. system, I think, take in the whole system, which are not representative of the Texas end of it.

On page No. 16 of the same exhibit, headed "Description of line lying in differential territory," he shows the Rock Island lines, Rehm to Romero, 23.4 miles. He also shows Amarillo to Glenrio, 65.4. The distance from Amarillo to Glenrio is 71.9 miles. The distance south of Dalhart, which is in differential territory would be 41 miles instead of 23.4.

(Exhibits C-249 to C-262 inclusive, witness Dowlin, were received in evidence.)

Cross-examination.

By Mr. Carr:

In connection with the figures on Exhibit C-260 showing the average amount in dollars and cents per car paid on horses, I cannot give similar figures on other classes of livestock.

R. G. WAGGENER, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Thompson:

I am assistant engineer for the Texas & Pacific Railway [fol. 943] Company, Dallas, Texas, and a member of the American Society of Civil Engineers. I have occasion to keep in touch with the operating department of the railway and make a study of operating statistics and results on that line, as well as on the railroads of the country generally. I have examined Exhibit C-169 introduced by Mr. Pelton, in which he has shown certain operating statistics for the year 1924 on the Texas and Pacific Railway. I have taken the figures shown in that exhibit and elaborated on them in my exhibit C-263.

Exhibit C-263 shows the figures given on Mr. Pelton's Exhibit No. C-169, arranged to show the cost per thousand net ton miles for the items of out of pocket and straight train mile costs and maintenance of equipment costs on that division.

I arranged the figures and grouped them for train mile and maintenance of equipment costs, and showed the cost per thousand net ton miles, including those two items of expense.

The Texas & Pacific Railway furnished counsel for the livestock shippers, at their demand in accordance with their specifications, certain information, that was introduced in exhibit form in Ex-parte 87-A and by Witness Pelton as Exhibit No. C-169 in this hearing. This information consists of operating figures for the years 1924 and 1926 by operating divisions and includes cost per freight train mile, and costs per 1000 gross and net ton miles for mainte-

nance of equipment, total transportation expense and total [fol. 944] operating expenses. We hesitated about furnishing this information, not because we were unwilling freely to assist in reaching a fair judgment in the rate cases involved, but because this statement does not make a correct showing of the relative costs of handling freight upon the different divisions of the Texas & Pacific Railway. The costs per freight train mile and the maintenance of equipment costs can properly be compared by divisions. Total transportation erpense and total operating expense cannot be compared by divisions.

Accordingly, in order to correct the wrong impression, which the above mentioned statement might produce, I now give the following costs per 1000 net ton miles of freight for the years 1924, 1926 and 1927. The method of arriving at these figures is given on my Exhibit No. C-263 for the year 1924. For the years 1926 and 1927 I used precisely the same methods. These costs per thousand net ton miles of freight are as follows: Rio Grande division, 1924, $5.493.

The figures on Exhibit C-263 carry out the statement that I have just made that the costs per freight train mile and the maintenance of equipment cost can properly be compared by division. Total transportation expense and total operating expense cannot be compared by divisions. Accordingly I have shown on Exhibit C-263 the thousand net ton miles of freight over each division, the number of freight train miles on each division, and then by dividing one into the other I get the net tons per train mile. Then [fol. 945] from the company's accounting records I get the out of pocket costs per freight train mile, as shown on Mr. Pelton's Exhibit C-169. Then line 5 of Exhibit C-263 divides the number of net ton miles per train mile into the out of pocket cost per freight train mile, and gives the out of pocket freight train mile cost per thousand net ton miles for each division and for the system. Then line 6 gives the cost per thousand net ton miles for freight and maintenance of equipment expenses on each division and for the system, and line 7 is the sum of the net ton mile costs per freight train mile, as I have defined it, and maintenance of equipment. The figures shown in line 6 are the same figures Mr. Pelton shows in Exhibit C-169. The variation in tonnage per train mile is reflected in the figures shown in line 7, that is as the volume of the tonnage in the train

is greater or less than shown in line 3, and the conclusions to be drawn by it is that a light train load is indicative of perhaps lower cost per train mile but considerably higher cost per net ton mile, the unit of receipts. Mr. Pelton commented upon the showing in his exhibit that the costs on the Rio Grande division were less than on the Denton division of the Texas & Pacific.

The tonnage per train mile has a great deal to do with that, not only is the tonnage per train mile indicated of light density and high operating costs, but it is also the [fol. 946] result of severe grades and adverse operating conditions.

The figures of costs per thousand net ton miles which for 1924 are those given in line 8 of my Exhibit No. C-263, and for the years 1926 and 1927 are arrived at in the same manner. These figures are for 1924.

Rio Grande division, $5.493; Fort Worth division, $4.797; Louisiana division, $5.130; Denton division, $9.885. For the system, $5.246.

For the year 1926, Rio Grande division, $5.546; Fort Worth division, $4.500; Louisiana Division, $4.988; Denton division, $9.285; System, $5.099.

1927, Rio Grande Division, $4.999; Forth Worth division, $3.987; Louisiana Division, $4.215; Denton division, $6.858; System, $4.446. From this, it will readily be seen that costs are materially higher on the Rio Grande division than on the Forth Worth and on the Louisiana divisions. Costs on the Denton division are the highest of any; but this is because the Denton division handles very little through traffic, has a light train load and is operated practically as a branch line. I will now explain why total transportation expense and total operating expense cannot be separated by divisions in arriving at relative ton mile costs, and hence why Mr. Pelton's Exhibit No. C-169 does not make a correct showing.

Transportation expenses and total operating expenses contain in addition to line-haul and maintenance costs, large [fol. 947] amounts for operating yards and terminals, operating stations, weighing and icing cars, traffic department expenses and general office expenses.

Freight yards and terminals are located in certain places to which and from which traffic converges and diverges, making necessary the breaking up, switching, classifying

and re-building of freight trains in order that cars may be handled to and from industries and connecting railroads and branch lines. These heavy switching and industrial centers are situated in various operating divisions of the railroad for reasons largely beyond the control of the railroad. The freight yards and terminals serving these places are sources of very heavy expense to the railroad, and this expense appears in the accounts of the division in which they are located, but their function is not divisional. The work that they do, and hence the expense incurred, is upon freight from all parts of the railroad; in fact a large part of it is for the benefit of freight traffic originating or terminating away from the division in which the yard or terminal is situated. Thus, although all the expense is charged against the division operating the yard, the work is done for all divisions. In other words, upon all freight shipped on or over the railroad there is a deferred charge for the expense of yard and terminal switching, and handling, which charge may not, probably does not, appear in the accounts of the division where the freight shipments originated.

[fol. 948] On the Texas & Pacific Railway there are the following freight yards, the list including the larger yards on the Fort Worth, Louisiana and Denton divisions, and all the yards on the Rio Grande division. The figures are payroll costs for the year 1926, as I do not have the 1924 figures at hand, and there would be no practical difference in the showing made.

Fort Worth Yard pay roll, 1926, $306,875; Dallas Yard, $199,057; Shreveport yard, $178,392; Longview Junction Yard, $112,432; Marshall yard, $99,590; Texarkana yard, $99,018; Alexandria yard, $68,126, including Boyce before change of terminals. El Paso yard, $58,602; Baird yard, $55,485; Sweetwater yard, $54,535; Big Spring yard, $42,538; Abilene yard, $15,125, Colorado yard, $10,360.

Boyce was formerly our sub-division terminal between Addis and Marshall, and during the course of improving operating conditions on the railroad, we built a new yard at Alexandria, which is only a few miles from Boyce, and is a large industrial and railway center. That change took place in 1926. So to show the comparative figures for the whole year I have used Alexandria, and during that portion of the year where the terminals were at Boyce, I have taken the Boyce figures and added them to what small ter-

minal expense we had at Alexandria prior to the transfer.

I did not include the New Orleans terminal costs because the New Orleans terminals are operated by a separate cor-
[fol. 949] poration, the T. & P.-M. P. Railway Terminal Company of New Orleans which is owned jointly by the Texas & Pacific and Missouri Pacific. For this reason the Texas & Pacific accounts do not show separate payroll expense for the New Orleans terminals. Although our accounts at Dallas do not show the payroll expense for the New Orleans terminals, we do include the Texas & Pacific proportion of the total expense of operating this New Orleans terminal. The Texas and Pacific and the International-Great Northern Railroad maintain separate terminals at Longview. The payroll costs I show do not include the terminal expense charged by International-Great Northern at that point; they are solely T. & P.

Fort Worth, Dallas, Longview Junction and Marshall are on the Fort Worth division; Shreveport and Alexandria are on the Louisiana division, together with several other yards not listed; Texarkana is on the Denton division; while El Paso, Baird, Sweetwater, Big Spring, Abilene and Colorado are on the Rio Grande division. Only one yard, that at El Paso, is in Texas differential territory; in which most of the livestock shipments originate.

The Fort Worth and Louisiana divisions have costly terminals because in them are the large centers of population, business and industry. The Texarkana terminals are part of the Denton division, and therefore the costs of operating that terminal appear in the Denton division accounts, but the greater part, by far the greater part of
[fol. 950] the traffic moving through that terminal moves over the Fort Worth division, and therefore the ton miles of business appear in the accounts of the Fort Worth division, very little of the ton miles of business passing through that terminal appear in the reports of the Denton division, but inasmuch as the expenses are charged against the smaller division, it goes to swell the cost per ton mile on the Denton division, and to reduce the cost per ton mile on the Fort Worth division, which is merely another illustration to show how difficult it is to separate these things on the divisional basis.

The Rio Grande division has very low terminal and yard charges because the freight originating there is handled

as quickly as possible with very little switching, in through trains to the heavy centers, Fort Worth, Dallas, Shreveport, Alexandria and New Orleans, where a heavy switching expense is incurred. Also at Longview Junction, Marshall and Texarkana freight trains are broken up, classified, and combined with other freight into through trains for St. Louis and Kansas City. And where freight from west of Baird is concerned all this expensive switching is a deferred charge to Rio Grande division traffic which appears in the accounts of the other divisions, but Rio Grande division freight rates must be large enough to meet it.

For example, livestock shipments between Fort Worth and Texas differential territory must pay for the line haul [fol. 951] to or from Fort Worth, the cost of which per ton mile can be determined relatively upon a divisional basis. The same shipments must also pay a high Fort Worth terminal cost for the expense of cutting the cars out of through trains, possibly feeding and watering the stock, switching the cars through the congested industrial district to or from Belt Junction at North Fort Worth, and handling by the Fort Worth Belt Railway to and from the stock yards and packing houses.

The same thing is true of station expenses, weighing and icing cars, traffic and general office expenses, as of yard and terminal expense. So involved and complicated is the interlocking of the various line and terminal costs, that they cannot be separated by divisions in such a way as to present a true picture of relative total transportation and operating costs per net ton mile.

The only items on Exhibit No. C-169 which are truly representative of divisional costs are maintenance of equipment per 1000 net ton miles and direct train mile expenses. These I have used in the divisional cost figures just submitted by me.

It is absolutely erroneous and not in accordance with the facts, to say that it costs less to handle freight on the Rio Grande division, and especially on that part of it west of Big Spring, which is Texas differential territory, than on the rest of the Texas & Pacific Railway. On the con- [fol. 952] trary, the opposite is true. The Rio Grande division in general and differential territory in particular is the most expensive portion of the railroad to operate, as I shall show in my subsequent testimony. This is true even

in regard to the Denton division when the effect of through traffic is considered.

I would like at this time to call particular attention to the fact that the Rio Grande division and Texas differential territory are not synonymous terms, although they are frequently used as such. That part of the Rio Grande division between Baird and Big Spring lies in Texas common point territory, including the Big Spring station and terminal itself, and this part of the Rio Grande division is one of the easiest operated divisions on the Texas & Pacific Railway. That part of the Rio Grande division extending from the Big Spring west yard limit to and including El Paso, lies in Texas differential territory and is the most difficult and expensive portion of the Texas & Pacific Railway. It will therefore be readily seen that to take the total Rio Grande division and use it is representative of Texas differential territory operating costs and conditions is erroneous and meaningless.

On the Texas & Pacific Railway, the problem of Texas Differential Territory and Texas common point and Louisiana territory, from an operating and engineering standpoint, is one of relative costs. Accordingly, I have pre- [fol. 953] pared data which show conclusively that the cost of handling freight in differential territory, on the Texas & Pacific Railway, is materially higher than on the remainder of this railroad, embracing Texas common point and Louisiana territory; and also show that because of physical, geographical and climatic conditions this relationship is practically fixed, and, if anything, the differential territory costs are becoming relatively greater.

My comparisons are based upon curvature, rise and fall, operating cost of water supply, and average freight train load. I will show that, because of these factors, operating costs per net ton mile of freight handled are 36 per cent hig[illegible] on differential than on common point and Louisiana territory for 1926 and 46.3 per cent higher for 1927.

Before lines of railroad are operated or, for that matter, before they are built, it is possible to determine what their relative operating costs will be. The methods and the factors used are recognized by the engineering profession, as the result of many years of practical experience in locating new lines and improving old lines of railroad, to be sound, rational and conclusive indicators of relative operating

costs. And with a railroad in actual operation, as is the Texas & Pacific, not only are these engineering data available, but also the actual accounting and operating results are matters of record and can be used to test, corroborate [fol. 954] and verify the results obtained from the physical factors of the engineer.

Therefore, as being the most logical, and I believe helpful, method of arriving at relative costs on the two portions of the Texas & Pacific involved, I have first analyzed the Physical Characteristics of the railroad as they pertain to the relative operating costs in differential and common point territories; and second, I have presented the actual results from the records of the railroad's operating and accounting departments as verification and quantitative measure of the physical data. And the results show very conclusively that differential territory costs per 1000 net ton miles are materially higher than Texas common point and Louisiana costs. Not only is this true, but because the difference is due to physical conditions of geographical location, differential territory costs will, in all probability, always be the higher. At present the spread is actually increasing and more traffic will only serve to accentuate the difference.

The mountainous and semi-arid character of differential territory in general is brought out by Exhibit C-264, comparison of physical cost factors, as well as by Exhibit C-265.

Exhibit C-265 is a condensed profile of the Texas & Pacific Railway main line from New Orleans and Texarkana to El Paso. It is difficult, even for those of us who are familiar with the great state of Texas, to realize what a big difference, both topographic and climatic, there is between [fol. 955] eastern and central Texas, together with Louisiana, on the one hand, and west Texas, on the other hand. The former is a country of low-lying, fertile, rolling plains and dense forests; while the latter is high and dry, with thin soil, broken by abrupt rocky escarpments and high mountains; and it has so little rainfall that, without irrigation, stock raising and mining are the only profitable, or even possible, industries. The profile, Exhibit No. C-265, shows the plains country from New Orleans to Ft. Worth, and the transitional section from Ft. Worth to Big Spring, which together constitute the common point and Louisiana terri-

tory. It also shows the high mountain country from Big Spring to El Paso, which is differential territory. With the exception of El Paso, every large city on the Texas & Pacific railway and practically all of the manufacturing and industrial development is in common point and Louisiana territory; while differential territory, in addition to being almost arid and very sparsely settled, includes five mountains higher than any east of the Mississippi River. These things indicate that railway operating costs must be higher west of Big Spring than east of it. The highest point of elevation reached on the Texas and Pacific is 4653.3 feet. As a comparison, Denver elevation is 5280 feet.

As a further help to an understanding of how physical conditions govern this matter, I wish to call your attention to Exhibit No. C-266, entitled "Rainfall in inches," Exhibit [fol. 956] No. C-267, "map showing average annual rainfall in Texas," and Exhibit No. C-268, "map sho-ing distribution of people in Texas." The purpose of these exhibits is to show the radical difference in climatic conditions east and west of Big Spring, and the effect of these conditions upon density of population and, hence, density of railroad traffic. It will be noted from Exhibit No. C-267, map showing average rainfall in Texas, that Big Spring, the western border of common point territory, is right on the western edge of the belt within which the average rainfall is 20 to 25 inches per annum. Eastward, the rate of rainfall increases steadily until at the eastern side of the state the average annual rainfall is over 45 inches. But west of Big Spring the rainfall averages only 10 to 20 inches per annum, except for a small area around El Paso where the rainfall averages less than 10 inches per annum.

For the year 1926, west of a line passing east of Amarillo, west of Abilene, east of San Antonio and entering the Gulf of Mexico about at Corpus Christi, the rainfall conditions were fairly uniform to El Paso and west, the precipitation for that year being 20 inches; while east of this line which represents 30 inches per annum, the precipitation rises rapidly, at Dallas and Shreveport being 50 inches per annum and at New Orleans being 80 inches. This showing is not reflected in these exhibits, but it is from the records of the United States Weather Bureau. From the annual report of the chief of that bureau. This was a favorable season

[fol. 957] for west Texas and in the two prior years the average in differential territory was only about 12 inches. Exhibit No. C-266, annual rainfall, brings this out clearly.

Exclusive of dry farming and farming by irrigation, agriculture can only be carried on successfully where the average rainfall is more than 20 inches. Therefore, Big Spring is at the extreme western boundary of the territory on the Texas & Pacific Railway where agriculture can be successfully practised in the absence of irrigation; and irrigation in differential territory is limited to comparatively small areas along the Pecos and Rio Grande Rivers. These conditions we can expect to govern the population distribution. And Exhibit No. C-268, distribution of people in Texas, shows with the exception of small isolated areas along the Pecos and the Rio Grande that west of Big Spring the population averages (1920 census) less than 2 persons per square mile; while east of Big Spring population increases, with the rainfall, from 2 to 100 persons per square mile.

It will be seen therefore, as I said before, that physical conditions practically fix operating costs higher and population and traffic density lower in differential than in common point and Louisiana territory.

The physical factors bearing on railroad operating costs, as commonly used by engineers, are rise and fall, curvature, and rate of gradient. In comparing stretches of railroad as long as those embraced by Texas & Pacific differential [fol. 958] and common point territories, there are involved several different rates of ruling grade. Therefore, a composite factor which will show the combined effect of all the grades is necessary in making comparisons. This composite grade for differential territory is 1.20 per cent and for the remainder of the railroad is 0.7 per cent. The ruling grade in differential territory is therefore 71.5 per cent greater than the ruling grade in Texas common point and Louisiana territory. The factors of rise and fall and curvature are given in Exhibit No. C-264, comparison of physical cost factors.

Curvatures and rise and fall. Curvature and rise and fall are largely fixed by the nature of the country in which a railroad is located. On the Texas & Pacific Railway they are subject to very little change, especially in differential territory. These two quantities are the measures of the

energy, above the internal friction of the train itself, expended in running trains and transporting freight over the railroad. Upon these factors depend train load in gross and maintenance costs per ton mile. They are, therefore, valuable as indicators of the fixed relative operating costs the two sections of the Texas & Pacific Railway under consideration.

Curvature, as shown on Exhibit No. C-264, is greater in the differential than in the common point territory of the Texas & Pacific. The length of curves per mile of line is less in differential territory than on the remainder of the [fol. 959] railroad, while the degrees of curvature per mile of line are more. This means that the curves are sharper west of Big Spring than east of it. Sharp curves are difficult to keep in good line and surface; and the life of the rail is shorter than on easy curves and tangent track. Hence, the curvature in differential territory is the more costly in operation, both as regards to track wear and maintenance, and wear and tear of equipment. Not only is this true, but on differential territory heavy curvature occurs on ruling grades, limiting the tonnage that locomotives can handle in both directions. Moreover, the worst curvature west of Big Spring, or for that matter on the whole railroad, is a series of long ten-degree curves on the eastbound ruling grade between El Paso and Sierra Blanca, which causes a 0.9 per cent grade to operate as a 1.30 per cent grade in the direction of heaviest traffic. One of these curves at mile post 750, just west of Torcer, is 2619 feet long and contains 234.75 degrees of curvature, reversing on to another ten-degree curve 969 feet long of 79.8 degrees curvature. The first curve is so long and so nearly a complete circle that the beginning and end of it are only about 1000 feet apart. Everything considered, curvature is a serious operating disadvantage in differential territory.

Rise and fall is given as operating rise and fall per mile of line, ruling grade rise and fall per mile of line, and absolute rise and fall per mile of line. By operating rise and [fol. 960] fall, I mean the sum of all ascents and descents, measured vertically in feet, in one direction, (it is the same eastbound and westbound), corrected for the velocity effect in sags, where the grade line is undulating. Ruling grade rise and fall is the sum of all vertical ascents and descents on ruling grades. Absolute rise and fall—absolute rise is

the difference in elevation between the beginning of the line and the highest point thereof. Absolute rise and fall is the sum of absolute rise westbound and absolute rise eastbound.

Rise and fall per mile, shown on Exhibit C-264, is much greater on differential territory than in common point and Louisiana territory. The product of the vertical rises in feet multiplied by the weight of the traffic in gross pounds, including locomotives, water cars and cabooses, in addition to the freight cars themselves, gives foot-pounds of energy required to haul the freight up the grades. This, leaving out friction, which is the same on steep or flat grades, determines the effort and cost required to handle the traffic.

It is not true, except to a limited extent, that the energy expended in climbing up the hills is recovered in coasting down them. It would be as reasonable to raise an elevator to the top of a twenty story building, and then say that by letting it drop to the bottom the energy expended in raising it would be recovered and the elevator operated for nothing. The energy would be recovered, but at the cost [fol. 961] of a wrecked elevator and ruined occupants. It takes power and effort to lower the elevator, as well as to raise it. Exactly the same thing is true of a railroad train operating on long, heavy grades. The energy expended in pulling the train up the grade could be recovered by letting it freely roll down, but at the cost of a wrecked train and ruined lading. On the contrary, the long mountainous grades in differential territory require the use of brakes on the descents, which consumes fuel, water and lubricants and causes heavy wear and tear on brakeshoes and equipment. The descents are consequently only less costly than the ascents.

From the foregoing, it will be readily understood why rise and fall per mile gives such a reliable indication of relative operating costs on differential and common point territory. Therefore, when I say, as Exhibit No. C-264 shows, that ruling grade rise and fall per mile is 65.9 per cent greater and absolute rise and fall per mile is 213.9 per cent greater west of Big Spring than east, it means that not only is the train load limited, but that the costs of fuel, water, lubricants, and wear and tear of equipment must necessarily be higher per ton mile in differential than in common point and Louisiana territory.

Water supply. Water costs are given in cents per thousand gallons of water used, for the year 1926. They show that the cost of water is nearly three times as great on the [fol. 962] differential territory of the Texas & Pacific Railway as on the common point and Louisiana territory. But this comparison does not tell the whole story of the disadvantages under which the differential territory labors in its water supply. Not only is the water expensive to obtain but it is scarce, and of poor quality.

Because of scanty supplies enroute, every freight train between El Paso and Van Horn is obliged to carry a water car to provide locomotive boiler water in excess of the capacity of the locomotive tender. Inasmuch as the total train load is limited by the heavy grades, this water car, not only adds to the operating cost of every train, but also subtracts from the revenue producing capacity of every train. This is as if our freight profit was a candle and on a goodly portion of differential territory we had to burn it at both ends.

Furthermore, all the water in differential territory has to have special chemical treatment to make it fit for use in the locomotive boiler. Even after treatment, the water causes the boiler flues and fire-boxes to deteriorate so fast that their life on the differential territory is only about half as long as it is on the rest of the railroad.

For example, the life of locomotive fire-boxes on the Louisiana and Denton divisions is ten years, and on the Fort Worth division seven years. But, because of pitting and corrosion due to bad water, on the Rio Grande division, which includes all of the differential as well as 127.5 miles of common point territory, fire-boxes only last three [fol. 963] or four years. As to boiler flues, on the Rio Grande division locomotives require and get a new set of flues once between general shoppings of the locomotives; whereas in common point and Louisiana territory they last from one general shopping to another. The additional expense involved is not limited to the actual cost of the fire-boxes and flues themselves, but is increased by the loss of time and earning power of the locomotive while it is out of service.

At present, there is no known remedy for this trouble. The chemical treatment of the water prevents the formation of hard scale in the boiler, and is necessary for this pur-

pose; but it does not help the pitting and corrosion or the foaming and priming. In fact, there is reason for believing that it increases these things.

All of this water trouble is worse west of Big Spring than east of it. And so it is that both in first cost and effect upon equipment, water supply is another serious operating disadvantage in differetnial territory.

Train load and ton mile costs. The preceding discussion explains why physical characteristics indicate that train loads must be smaller and operating costs per ton mile must be greater in differential than in common point territory. I will now show that these things are actually the case.

The facts are given on Exhibits Nos. C-269 and C-270, comparison of operating cost factors, together with their derivation and basic supporting data, for the years 1926 [fol. 964] and 1927, respectively.

Train load represents the combined effect of all the variables entering the freight traffic operating costs, including grades, curves, density and balance of traffic, car loading, water supply, engine utility, size and efficiency of locomotives and, with the exception of rise and fall, the many intangibles that enter into the final costs per ton mile. A freight train, whether of one car weighing 30 tons or 100 cars weighing 3,000 tons, has to have an engine, a caboose and a full crew of enginemen and trainmen; it follows that, although by reason of its light weight the one car train costs less per train mile, its cost per ton mile is very much greater than the cost of the 100-car train. It is still true that "expenses are by train mile and revenues are by ton mile."

Train load on the Texas & Pacific Railway, in net tons per freight train mile, was 60% greater for 1926 and 61 per cent greater for 1927 in common point and Louisiana territory then in differential territory. Net ton miles are what produce the revenue. Every freight train, therefore, east of Big Spring has on the average 60 to 61 per cent more earning capacity in vendable transportation than freight trains running west of Big Spring. But the cost per train mile was only 17.5 per cent greater for 1926 and only 9.8 per cent greater for 1927 in common point territory than in [fol. 965] differential territory. For these reasons, the cost per ton mile must be higher in differential than in common point and Louisiana territory.

It cost in fact, as Exhibits Nos. C-269 and No. C-270 shows, 36 per cent more in 1926 and 46.3 per cent more in 1927 to carry a ton of freight one mile in differential than in common point and Louisiana territory.

The physical characteristics are constant quantities, but train loads and ton mile costs will fluctuate from time to time. There is, however, no reason to expect any materially different showing for the present or immediate future, except to increase the relative disadvantages of differential territory. This is apparent from the cost figures of Exhibits No. C-269 and No. C-270, which show an increasing trend of the spread between ton-mile costs on the two territories involved. Even though there may be a decrease in the ton-mile costs in differential territory as the volume of traffic increases, the increased volume of traffic in common-point territory causes an even greater decrease in ton-mile costs in that section.

All of these things, character of the country, curvatures, rise and fall, water costs, train loading, and actual cost records, demonstrate conclusively that railway freight operating costs on the Texas & Pacific Railway are and must be higher in differential territory than in common-
[fol. 966] point territory and Louisiana.

Now, I would like to refer to the oil development in differential territory and its effect upon the earnings of the Texas & Pacific Railway. It has been referred to at various times that—because of the oil development west of Big Spring conditions had changed on the Texas & Pacific Railway. I think my cost figures shown on Exhibits Nos. C-269 and C-270 show rather clearly that the oil traffic has not had the effect of changing the relative operating costs as between Texas differential and Texas common-point and Louisiana territory, but I would also like to refer to some of the things involved in the effect of this oil development upon the Texas & Pacific Railway.

Exhibit No. C-271 is a statement of the expenditures which the Texas & Pacific Railway has been obliged to make west of Ft. Worth to care for the traffic conditions caused by the west Texas oil boom. It shows that we have had to spend $4,832,092.00 to put us into a position to handle this oil traffic and to serve our patrons in that territory. This statement does not include all of our expenditures west of Ft. Worth, but solely those which were made neces-

sary by the West Texas oil boom in differential territory, but although it costs us an immense sum of money to render service in that territory, we have sound reasons for believing that this additional business, due to this oil field development, is temporary in its nature, and, both in volume and [fol. 967] gross and net earnings, will last only a relatively short time.

As evidence of what we may expect in the future I would like to refer to the Panhandle & Santa Fe Railway and the Gulf, Colorado & Santa Fe Railway, along whose lines there was during the course of 1926 and 1927 a very heavy oil field development, in what is known as the Amarillo field.

I would like to read into the record the net railway operating income of the Panhandle & Santa Fe Railroad for the first seven months period, January to July, inclusive, for the years 1925, 1926, 1927 and 1928. For the year 1925 for the Panhandle & Santa Fe Railroad for this period the net operating railway income was $831,703.00; for the year 1926 it was $2,180,723.00; for the year 1927 it was $1,258,718.00, and for the year 1928 it was down to $482,076.00. So that although for the year 1926 especially, and part of the year 1927, the Panhandle & Santa Fe enjoyed a very large net railway operating income, after the peak of the oil development was over and construction material ceased to move into the filed, and oil pipe lines had been built to carry the oil produced out of the field, at the present time the net railway operating income of the Panhandle & Santa Fe Railroad has dropped to a point almost one-half of what it was in the year 1925, about when the oil boom started.

For the Gulf, Colorado and Santa Fe the figures for the same years are as follows: For the year 1925 the net [fol. 968] railway operating income for the first 7 months, inclusive, was $1,302,453; for the year 1926 $1,637,036.00; for the year 1927 $2,428,544.00; for the year 1928 $1,024,211.00, showing the same rise and fall, due to the waxing and the waning of the oil field development along the Panhandle & Santa Fe. I would like to add also that our Texas & Pacific experience in other oil field developments along these lines has been the same as that of these railroads referred to, and I think that Mr. Ryser's testimony brought out the fact that in the Ranger and Eastland fields the traffic

climbed up to really tremendous proportions during the oil boom, and since the oil boom is over the traffic, or revenue, is back to what it was or even lower than what it was, before the oil boom started. It is just my personal opinion that the Panhandle & Santa Fe's net operating income was higher in 1926 and that the G. C. & S. F.'s was the highest in 1927, was due to the movement of construction material in that field over the Panhandle & Santa Fe during 1926 and the movement out of the field of oil in tank cars, which moved over the G. C. & S. F. in 1927. That may not be the true explanation but that is about the size of it.

On the first sheet of Exhibits C-264, C-269 and C-270 I show the result of my computations, and the computations themselves on the succeeding sheets, with, I think, a full explanation of how the conclusions were reached.

[fol. 969] At the time it might be just as well to refer to the question of maintenance of way. There is an impression current at these hearings, and outside of these hearings, that because of the climatic conditions our maintenance of way costs are very low in differential territory. That is not true. The rainfall is very light in differential territory, and throughout west Texas, but what rain does occur is very sudden and torrential in its character, almost a cloud-burst, and hardly a year passes that we do not have floods and washouts in that territory, sometimes tying up all of our traffic for considerable periods. We had this experience in July and August of this year, and I would just like to read into the record just one of many reports which were received by our executive officers in Dallas from the operating officials on the ground during the course of these heavy floods and rains and washouts, this being one of many instances: "July 5, 1928, 6:45 P.M., bridge 678.3, 2 miles west of Cozar, men cutting east bridge. Will take until midnight to the track open to Toyah and west. Bridge 661.4 east approach washed out for rail length and cutting bad. 4 rails washed out main line 4 different places. Ten poles east mile post 663, bridge 663, east approach washed out for rail length and still cutting bad. Mile post 663.6 poles west bank on north side of main line badly scarred for 2 pole lengths. Mile post 664, 2 poles west track washed out and swinging for 5 pole lengths." I would like also to read [fol. 970] in here for the same day, "2.33 P.M., levee west end Toyah yard broke through and flooded Toyah yard and down sides. Water running through lead to round-house

very fast. At best cannot expect to pass a train before 7 or 8 P.M."

That isn't all of it, but I just wanted to give an example of what we are up against in maintenance of way.

I personally worked out the ratings and we ran test trains over the railroads to verify these ratings before putting them in effect, and the ratings shown on Exhibit C-265 are those now actually in effect upon the Texas & Pacific Railway.

I show the rating of D-10 locomotive from Shreveport to Alexandria at 3100 tons, and between Alexandria and Gouldsboro as 4,000 tons. Assuming you have a train of a hundred cars averaging 31 tons, hauled by that locomotive from Gouldsoboro to Shreveport, if you want to carry the same train further west, where the tonnage rating, falls off materially, it would be necessary to break the train up in more than one section or use a heavier locomotive to haul it further west.

(Exhibit C-263 to Exhibit C-271, witness Waggener, were duly received in evidence.)

M. A. RAWLINGS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Outlaw:

I am assistant chief clerk of the freight department of the Rock Island at Kansas City. My testimony will deal [fol. 971] with Colorado, common points and east to Kansas, Missouri River and east, and from the State of Kansas to the Missouri River and east. Before proceeding with the testimony I would like to make a correction on page 4 of Exhibit No. C-276. Under the mileage column opposite Fredonia, Kansas, the mileage should be 398 miles instead of 409.

That will, of course, make a slight change in the earnings based on that mileage, but the relationship of earnings of horses and mules to the other loads will not be in any way affected. I have prepared no figures as covering from Colorado to Kansas points, or to the Missouri River and

east. It is the carriers' proposal, however, to apply from that territory 45 per cent of the first-class rate, as proposed in 17,000, par 2, to apply to and from the same territory. This scale will be dealt with by witnesses following me covering rates to Nebraska and upper Missouri River crossings, and what is said in regard to Nebraska will apply with equal force to Kansas.

Considerable testimony has been given as to the value of horses and mules on the farms, but witnesses seem to have no idea of how these values were arrived at, and in such event I do not understand what value they have in this proceeding.

Witness Clarke has presented his Exhibit No. C-207, the market values of these animals at St. Louis, and I wish to at this time present my Exhibit No. C-272, which gives the [fol. 972] market values of the animals at the Kansas City market. This information was taken, as shown on the exhibit, from the Kansas City Star of Tuesday, October 2nd, 1928, and reproduces the item in full. Those per cents showing quite a variance with the prices shown on the Witness Tedrow's Exhibit No. C-175, page 9.

Exhibit No. C-273 is a statement of cars handled and the loading of all traffic as compared with that of horses and mules. It will be noted that the loading of horses and mules is in each instance less than half of that of all other commodities.

That is for the Rock Island system, as shown in the head of the exhibit. The exhibit does not show the total livestock leading of the Rock Island for 1927, but I wish to say that it amounted to 16,909 cars, the horses and mules being but 2.8 per cent of the total.

Exhibit No. 274 is a statement of comparisons of the present horse and mule rates and the present first class rate from 32 representative points in the State of Kansas to both Kansas City and St. Louis. These points were selected due to their importance, location and so forth, and it will be noted, covers every portion of the state of Kansas. The total average per cent of the 32 points shown on the exhibit to Kansas City averages on the horse and mule rate 25 per cent, and to St. Louis 30 per cent for the first class rate. The difference in percentages is largely accounted for from the establishment of the Kansas statutory rates [fol. 973] of 1909, which has previously been explained by the witness Gillespie.

Exhibits Nos. C-275 and C-276 are similar, No. C-275 dealing with rates to Kansas City and No. C-276 to St. Louis.

Under Column A I have shown the present rates in dollars and cents per car, and the earnings per car per mile on that rate; also on the rate that we propose, in dollars and cents, and the earnings per car per mile on that rate.

P. C. P. M. stands for "per car per mile".

I have shown these proposed rates in dollars per car based on a minimum of 23,000 pounds, due to the fact that the rates at the present time in effect are in dollars and cents per car, and it was necessary to do that for the sake of comparison.

The rates are in dollars and cents per car and the earnings in cents per car. The proposed rates on Exhibit No. C-275 from Topeka is $69.00 per car, and the earnings in cents per hundred is 106.1 cents. That is earnings in cents per car per mile.

In Columns B and C inclusive I have shown the earnings per car per mile on other traffic moving from this territory. In presenting the figures I am not doing so with any idea of relating the commodities, one with the other, but simply to show that under the present rates horses and mules do not earn a fair return as compared with other moving commodities in the territory. The mileages shown on these two exhibits are the short line mileage figured on the 13535 [fol. 974] formula, that is via junctions where we have track connections. In making up the exhibits the routing was, unfortunately, overlooked or omitted. However, I have the work sheets with me if it is desired to specify over what routing particular mileage is made.

The figures shown under the proposed rates are based by using 45 per cent of the first-class rate under the 13535 scale and are computed on actual point to point mileage. As stated by Witness Inkley, we are willing, however to use instead of the actual mileage the grouping arrangement which has been put into effect in the present tariffs from various points of origin in the State of Kansas. That grouping was not prescribed, but I understand, it is a graduated extension of the Oklahoma groups.

The groupings in my last statement are the groupings as they exist at the present time at points of origin, and are published in the tariffs at the present time.

As to destinations, we have no objection to using either the present tariff group, or in the case of the Missouri River

taking the average of the Kansas City and St. Joe rate to apply to both of the markets. The grouping of which I spoke is the grouping in Kansas going to the Missouri River or east, and we are willing to apply the tariff groups.

If the average of the rates of the Missouri River cities is higher than it would be on the basis of the average of the distance I believe the average of the rate is proper.

[fol. 975] In our proposal, on traffic originating in Kansas to St. Louis, the basis is 45 per cent of the Southwestern first class scale. The 45 per cent of the 17000 scale applies only on traffic originating in Colorado, so far as I am concerned.

The carriers are of the opinion that on the traffic east of the so-called Kansas-Missouri western boundary line and the territory west thereof, so far as traffic to and from Kansas City is concerned, should pay the same scale of rates. The Commission has stated there is no substantial difference in transportation conditions.

(Exhibits C-274, 275 and 276, witness Rawlings, were duly received in evidence.)

J. E. Flansburg, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination (pro se):

I am Commerce assistant, Chicago & North Western Railway, representing in this case the Chicago & North Western Railway and the Chicago, St. Paul, Minneapolis and Omaha Railway which operates both in Nebraska and in eastern South Dakota.

In Docket 13535, in co-operation with the Nebraska Commission prescribed rates on livestock from Nebraska origins to the Missouri River markets, and in that decision, incidentally, I might say they included horses and mules on the basis of 115 per cent of the cattle rate.

[fol. 976] As stated, the decision covers rates only from origins in the country to the Missouri River markets. They didn't apply westbound from the markets to points in Nebraska, neither did they apply to points within Nebraska, other than the markets.

As I remember the testimony of Witness Ross, of the Nebraska Commission, he stated there was no objection to

the application of that scale in both directions. However, subsequent to the decision in this case, the Nebraska Commission instituted an investigation as to the rates on livestock westbound from the Missouri River to Nebraska, and also between points in Nebraska, a hearing on which was held a year or so ago, and on which no decision has been rendered.

The Commission prescribed two scales; one for application in Northern Nebraska, and one for application in other than Northern Nebraska. When I get to the map of the Chicago & North Western Railway, which is shown on one of the exhibits, I will explain roughly the line of demarkation between the two territories. So far as the North Western Railway is concerned on traffic, livestock or horses and mules to Kansas City and St. Joseph, if I remember correctly we have no joint through rates.

The rates apply from other than Northern Nebraska to Kansas City and St. Joe, but not from Northern Nebraska. The Missouri River markets, so far as we were concerned, were Omaha and Sioux City.

[fol. 977] In Docket 12268, previously known as the South Dakota case, rates on livestock, including horses and mules, from South Dakota to all markets, including Chicago, St. Paul, Milwaukee, Wis., Omaha, Sioux City, etc., that scale was a single and joint-line scale, arbitraries being made for joint lines under 500 miles—distances under 500 miles, the rates also to apply over not more than three lines so far as distances were concerned. A set of arbitraries were also prescribed for Western South Dakota. Since the decisions in this case there have been certain other decisions by the Commission, of which I think mention should be made at this time. The rate to Chicago from Sioux Falls, S. D., has never been on the 12268 scale. At the time we were complying with the order a communication was received from one of the Commissioners suggesting that Sioux Falls be placed on what was then considered to be the regular percentage from Sioux City of 104 per cent, so the rate from Sioux Falls was checked in on the basis of 104 per cent of the rate from Sioux City.

Oscar Meyer & Company, of Madison, Wis., filed a complaint involving the rates from Sioux Falls to Madison versus Chicago, decision being found in 122 I. C. C. 305, at which time the Commission found the rate to be not

unreasonable, but unduly prejudicial as to destination points, Madison versus Chicago.

About the same time the Sioux Falls live stock interests filed a complaint, the first decision being found in 109 [fol. 978] I. C. C., 501, and the second decision in 144 I. C. C. 209.

In complying with the Oscar Meyer order, the carriers removed, or at least endeavored to remove the undue prejudice by increasing the rate to Madison, Wis., from all origins on the Missouri River, including Sioux Falls and South St. Paul. That was suspended and the Commission's decision on that order is found in 139 I. C. C. 499. The final result of it was that the rate to Madison, Wis., was reduced from Sioux Falls.

Now, in connection with the carriers' proposal on livestock is 17000, part 9, and the suggestions that have been made in this record as to relating horses and mules to edible livestock, such as cattle; under the Hoch-Smith resolution it may be roughly said that the rates on agricultural products should be on a basis—on the lowest lawful basis, and when the carriers in their proposal in 17000, part 9, livestock, gave consideration to the scale which they thought should apply, it was placed in the record specifically at what they considered should be a minimum scale advanced in the light of the Hoch-Smith resolution. Our contention is that so far as the rates on horses and mules are concerned, it would be unsound to relate them in anyway to a basis of rates which are proposed to apply in accordance with the Hoch-Smith resolution in all of its aspects. Therefore, so far as the western trunklines are concerned the proposal will have no relationship whatever as between the rates on horses and mules and the rates on edible live- [fol. 979] stock.

The same defect goes to the proposal of the South Dakota Board in this case, which was, as I remember it, 115 per cent of their proposal in 17000, part 9, as reflected in the exhibits which they have presented.

In connection with the exhibit placed in the record by Mr. Carr as to the Holmes and Hallowell decision on soft coal and the transportation characteristics in that case as brought out in that case and in the South Dakota livestock case. I think a reading of those decisions will show quite clearly that there was no gradation in the soft coal case,

and approximately 72 per cent of the transportation was east of the South Dakota line.

Exhibit No. C 277 is a map of the Chicago & North Western Railway and the C. St. P., M. & O. Railway shown as one system. The line of the C. St. P. M. & O. Railway is west of the Missouri River north of Omaha, to and including Sioux City west through Sioux City to Norfolk and the three lines, stubends, jutting north from that line. North of Sioux City it goes to Alton, to Washington, thence west to Mitchell, and north to the Twin Cities. The balance of the line shown on the map is the Chicago & North Western Railway.

Roughly speaking, the territory in Nebraska known as Northern Nebraska is on and north of the line of the North Western Railway from Omaha straight west through the state of Nebraska. The other than Northern Nebraska is [fol. 980] south of that line, including the three branch lines shown on this map, terminating at Lincoln, Superior and Hastings. What we ordinarily term the South Platte territory, it will be noticed that the line of the North Western Railway pretty well permeates through the state of South Dakota, I mean all of that part of South Dakota which is west of the Missouri River running north and south through practically the center of the state.

I think it might be well to again call attention to the fact that the scope of this hearing is somewhat limited in that the rates locally in Nebraska and between Nebraska and Missouri River are involved, but not the rates from that territory to points east of the Missouri River, while the situation is different from South Dakota which involves as a destination territory all points Missouri River and east located in western trunk line territory. The proposal which will be made later on, and fully explained later, I think, show the different situations, it being understood, of course, that so far as the railroads are concerned, the proposal would apply from and to all of the territory involved.

In connection with the movement of horses and mules in so far as they originate on points on the C. & N. W. Railway: Page 2 of this exhibit shows the number of cars and tons which originated on that railway of horses and mules in the state of Nebraska and in South Dakota from 1922 to 1927, inclusive. This is taken from the reports of the

auditor and a little later on another exhibit will show infor-
[fol. 981] mation pertaining to the destination territory.

No information is in here of a statistical nature pertains to the Chicago, St. Paul, Minneapolis & Omaha Railway except one density exhibit. All of the rest of the statistics apply to the C. & N. W. Railway alone.

You will notice that from Nebraska the cars increased from 253 cars in 1922 to 437 in 1927, and from South Dakota 69 cars in 1922 to 788 cars in 1927.

Page No. 3 of the exhibit shows the per car charge on horses and mules, livestock and general headings, as shown in the reports to the Commission for the year 1913 versus 1924, 1925 and 1926, showing the charges received, the increase or decrease as the case may be, 1913 versus those years, and the percentage increase per car, 1924, 1925 and 1926 over 1913. It will be noticed the percent, horses and mules, 1926 over 1913, is 37.76 per cent, while all traffic is 84.43 per cent. Generally speaking the other figures are clear and show a much larger percentage increase per car.

Page No. 4 of the exhibit shows the revenue per ton, Chicago & North Western Railway 1913 on to and including the year 1926, on horses, which includes horses and mules, cattle, sheep and hogs, and all carload freight. It will be noticed that the percentage 1926 over 1913 on horses is 30.09 per cent, all carload freight 62.86 per cent, with somewhat smallest figures 1926 over 1916.

[fol. 982] Page No. 5 shows information pertaining to the car loading of horses and mules and other commodities handled by the C. & N. W. Railway for the years 1913 and 1927, and the increase or decrease, as the case may be, in the tonnage loading. The exhibit is very clear and shows the relative range, and it should be borne in mind that the horse and mule situation, so far as loading is concerned, is practically stationary.

Originally we had 31-foot and 33-foot cars, but practically all of them are out of service at this time, and we use usually 36-foot 6-inch cars as the standard livestock car.

Page No. 6 of the exhibit is a report showing the forwarding from Nebraska and South Dakota during the year 1927 to different destination territories as compiled from reports furnished through the division freight agents. This shows that the destination territory of horses and

mules is the Missouri River for points in Nebraska, so far as Nebraska is concerned, with some in Iowa, and from South Dakota it goes to Illinois, Wisconsin, Iowa, or Missouri River and other points in South Dakota.

I mean Omaha and Sioux City as the Missouri River. Kansas City is shown there, and likewise beyond Kansas City, and you will notice the movement there is practically nill. You understand we don't reach Kansas City, but operate through another carrier to get there through the Omaha gateway, and as a general proposition, our products of agriculture, so far as our northern lines are concerned, move to Omaha or Sioux City. In order to show [fol. 983] what the movement locally in the different states is on the C. & N. W. Railway, page 7 has been compiled for the year 1926. It is true that no states are involved except locally in Nebraska, but I thought this would be considerable information as it goes to the point of the total amount of this commodity on the C. & N. W. Railway. As I understand, the local rates from South Dakota are not involved in this proceeding.

Pages 8 and 9 show the revenue load per car on the C. & N. W. Railway for the year 1927 on horses and mules, and the many other commodities shown there are the tare weight of the cars; that is, the load of the empty, be it box, refrigerator or stock car, as the case may be, and those two added together to ascertain the gross weight of the car and the percentage in the last column the revenue is of the gross weight. It will be noticed that horses and mules and other live stock run lower, as a general proposition, than any other commodity.

Pages 10 and 11, of the exhibit show the amount of commodities 1913 to 1926, inclusive, for the C. & N. W., of horses and mules, other live stock, and the general loading shown in the annual report. It will be noticed that the movement of horses and mules on the C. & N. W. Railway is a very small part of the movement of livestock. We are a granger railroad and quite dependent upon the movement of live stock and other agricultural products, and [fol. 984] it will be noticed that for the year 1926, for example, we handled 3,434 cars of horses and mules, cattle and calves, 74,480, and all livestock 181,740. There is also shown in the last column of page 11 the percentage the movement was, 1926 over 1913. This shows a slight de-

crease in the movement of horses and mules of 27.17 per cent.

Page 12 shows the traffic density on the C. & N. W. Railway in Nebraska. It is understood this excludes the C. St. P. M. & O. Railway for the year 1927. There is also shown the same information pertaining to the other states, including South Dakota, which is included in this proceeding, and it should be borne in mind that the C. & N. W. Railway doesn't have the benefit of the overhead transcontinental traffic through Nebraska or South Dakota, but the only traffic which it secures in Nebraska of an overhead nature is that from Wyoming which is 75 per cent oil.

Page 13 shows similar information pertaining to the C. St. P. M. & O. Railway, which, as stated before, operates in both Nebraska and South Dakota. It will be noticed that the—that Nebraska and South Dakota carry the lowest revenue tons one mile per mile of line for that railroad.

Pages 14 and 15 cover information similar to that which has already been stipulated in this record, I believe. This statement 28,105 of the Commission shows the density situation in the western territory including the southwest, western trunk line and inter-mountain territory. The states [fol. 985] involved here directly are Nebraska and South Dakota.

Page 16 is a comparison of the Northern Nebraska scale as taken from the report of the Commission, single line and joint line, the South Dakota single line and joint line, and the Southwestern scale. The citations and authorities are shown on the bottom of the page. No further comment is necessary.

Page 17 shows the Nebraska scale, together with the horse and mule scale in the southeast, which is a compromise adjustment allowed to become effective by the Commission. Now, in order to show, and which we think proves, the very low character of the rates prescribed by the Commission in Nebraska and from South Dakota to the east, pages 18, 19 and 20 are submitted. It should be borne in mind also that the Commission itself in its decision in the Nebraska case stated the rates so prescribed were not reasonable maximum rates and the presumption is that it is a scale designed primarily for the equalization of markets rather than to furnish to the carriers proper revenue. The C. F. A. scale on livestock originally pre-

scribed in 36 I. C. C., 675, and likewise the last decision, 144 I. C. C. 731 are shown on this page. It should be borne in mind also that the last decision on livestock in C. F. A. territory did not include horses and mules; in fact the first one didn't either, and the last decision also was made, having in mind the Hoch-Smith resolution and its requirements. In C. F. A. territory horses and mules [fol. 986] move generally at second class rates which are 85 per cent of first class, comment on which was made by the Commission in 120 I. C. C. 607, 63 I. C. C. 6, 743 I. C. C. 419, and 91 I. C. C. 459.

It will be noticed that regardless of the difference in transportation conditions which the Commission has recognized at different times, the rates on livestock in Nebraska and South Dakota are very little above the rates prescribed in c. f. a. territory. The Nebraska scale as compared with the original c. f. a. scale is 99 per cent of Scale 1 and 94 per cent of the c. f. a. scale and Scale 2. The second decision in c. f. a. territory, Nebraska scale 1 is 113 per cent and Scale 2, 108 per cent. South Dakota percentage is of 36 I. C. C. 675, 101 per cent and of the last decision, c. f. a. territory, 115 per cent.

Some years ago the Commission prescribed in c. f. a. territory what was known as the Disque scale, and in territory Missouri River and west, what is known as the Clark scale, class rates to apply in those respective territories.

Page 19 is designed to show typical mileages, the percentages which the Clark scale is of the c. f. a. scale, it being 142.3 per cent. This is to be contrasted with page 18 on livestock, both decisions having been made by the Commission in different cases. Cement rates are also another indication as to the situation in the different territories, this being outlined on page 20. The decision in the cement case in c. f. a. territory including Illinois, is Docket [fol. 987] 12710, and in western trunk-line territory Docket 8182, that percentage was 142.7 per cent.

Exhibit C-278 is the map which was used in the livestock case, 17000, page 9, and was the dividing line of the different proposals of the carriers in that case. So far as this proceeding is concerned, the division of territories as between Scales 1 and 2 stops at the Nebraska-Kansas line at Superior. All that part of the black line in Kansas through

Missouri should be eliminated so far as this particular case is concerned.

That part of the description shown on page 21, which covers territory south of the Nebraska-Kansas line should be eliminated. Technically speaking, so far as Scale 1 territory is concerned the only points involved would be those points in South Dakota, including Sioux Falls, S. D. in eastern markets. This line represents the dividing line of the two rate territories, cut across through Nebraska in what is known as eastern differential territory from southwest from Sioux City through Humphrey, Columbus and Grand Island down to Superior.

The proposal of the western trunk lines is 45 per cent of the proposed first-class scale in Docket 17000, part 2, covering the suggestion of the carriers in that case, and in Scale 2 territory 110 per cent of the rate in Scale 1, and in Scale 3, 115 per cent of the rate in Scale 1. The state of [fol. 988] South Dakota is divided at the Missouri River and a hair-line drawn from Chamberlain and Winner and Valentine to the extreme western part of Nebraska to include Colorado common-point territory on Scale 2.

The basis which we propose to apply from Scale 2 to Scale 1, for example, or in the reverse direction, is the higher basis. We have made a deviation from the proposal in the class rate case so far as the division of the territory is concerned, and also so far as the rate basis is concerned.

Page 22 of the exhibit shows the rates which are proposed to apply in the territory involved in this proceeding made in the manner previously mentioned. So far as the application of the distance is concerned, page 26 shows the basis upon which the western trunk line class scale was promulgated by the carriers in that proceeding. The decision of the Commission in the Duluth Chamber of Commerce case where not more than three lines are used, and in the southern class decision where the shortest route was used from which carload traffic may be interchanged without transfer of lading. The proposal of the western trunk lines is based upon what is known as the normal distance and if the scale which Commission should prescribe, if any, in this case, is based upon the same principles as announced in the southern class rate case, we think the scale should be inflated to take care of that in the same manner as the

Commission actually did in the southern class rate sup-
[fol. 989] plemental order.

Page 27 of the exhibit is a statement showing the existing rates and minimum weights on horses and mules in this territory. It is my understanding there has been no suggestion made to change the minimum weight, but in connection with that, if the change should be made, we think the rate and minimum weight are dependent on each other and no change should be made in the minimum weight without a change in the rate.

Page 28 is simply a set of tariff rules pertaining to the transportation of livestock, including horses and mules.

The average tare weight of cars shown on sheet 8 are the tare weights of the cars moving via the C. & N. W. Railway, where a box car on wheat, for example, was 18.5 tons, stock cars 18 tons, refrigerator cars 23 tons and so forth. I think they are low, based upon the tare weights shown in 17000, part 9. The figures themselves were secured quite some time ago and really haven't been changed to reflect certain levels.

On Exhibit No. C-279 I have shown on the first 7 pages the situation from Nebraska to Sioux City, and from Sioux City, Ia., to Nebraska, according to the different stations on the C. & N. W. Railway in 20-mile blocks. The rates from Sioux City are at present on a basis of dollars and cents per car, and in order to secure the proper amount of rates in cents per hundred pounds, the dollars and cents per car [fol. 990] should be divided by the minimum weight of 23,000 pounds. This is brought out to show that we have a different scale eastbound than westbound, and whatever is done in this case we think should be made to apply between state and interstate points in Nebraska, and also locally in Nebraska.

The same information has been shown on pages 8 to 14 inclusive, so far as Omaha is concerned. Scale 1 and Scale 2 have both been shown here for the reason that a part of our territory is in Scale 1 and a part of it in Scale 2.

In connection with the justification of the proposed scale to apply on horses and mules from points in Nebraska to Sioux City, you see, for example, that information is shown from points on the C. & N. W. Railway on pages 15 to 22, inclusive. The distances shown which are C. & N. W. distances, the weight is the average weight on those particular

commodities on the C. & N. W. Railway for the year 1927. Rates are those taken from tariffs on file with the Commission except the proposed rates on horses and mules. The earnings per car mile. The cement rate used in that prescribed in 8182, the soap rate is that of 5th class, but not to exceed 25 per cent of first class proposed in I. & S. Docket 2748. The character of the rates as to whether or not they are class or commodity is shown in the left of the last column. I think an examination of those pages show- quite clearly that if we were to secure our proposal on horses and mules we would not be receiving too much revenue for [fol. 991] their transportation, particularly when you keep in mind the fact that the commodity rates in this territory being of a necessity lower than the class rates, and the class rates themselves being depressed, reflect a basis not proper for general application.

Pages 23 to 30, inclusive, show the same information with the same lineup of commodities as a general proposition, and the proposed rates on horses and mules from Nebraska to Omaha, Neb. Now, in order to show further that the rates in Nebraska as prescribed in 13273 are low, pages 34 and 35 have been inserted which is a comparison of the rates on horses and mules from Nebraska to Sioux City and Nebraska to South Omaha with the rates on the same commodity from Iowa to Chicago. The rates from Iowa to Chicago are in dollars and cents per car and the rates in Nebraska have been converted to that basis to show the same picture. We don't, as a general proposition, maintain throughout the entire territory any definite relationship of horses and mules to cattle. In the only cases which we have had of recent years, such as Nebraska, South Dakota, the Commission has used 115 per cent of the cattle rate, but in the balance of the territory they are both higher and lower than the cattle rate.

Pages 35 and 37 are simply inserted to show a picture of the situation from points on the C. & N. W. Railway in [fol. 992] Nebraska to Omaha and Sioux City, Neb., the present rate and what the proposed rates would make according to the carriers' proposal. It will be noticed they are increases. In order to show what the Commission has done in Western South Dakota in different cases involving that territory, page 38 has been prepared showing the arbitraries prescribed by the Commission in different cases involving that territory, together with the authorities. With-

out regard to what we think of the measure of those arbitraries, it does show that the Commission recognize the fact, so far as that territory is concerned, it should be something over and above any scale which may be prescribed. The rates on horses and mules from South Dakota to Chicago, among other eastern distinations, is involved, and page 39 shows a statement of the present and proposed rates to apply on horses and mules from South Dakota to Chicago.

The rates from South Dakota to Sioux City, Ia., are also involved, and pages 40 to 45 shows a comparison of the proposed rates on horses and mules with many other commodities moving from and to the same points, although sometimes in the reverse direction. I think this again quite clearly shows that the proposal is not out of line with that applicable on other commodities.

Pages 45 to 47 shows a comparison of the proposed rates on horses and mules from South Dakota to Chicago with the rates on other commodities. Page 48 shows the present rates on horses and mules from South Dakota to Omaha, [fol. 993] with what the proposed scale would be. The same information is shown on page 49 pertaining to horses and mules from South Dakota to Sioux City.

Pages 50 to 54 is a comparison of the earnings per car on the proposed horse and mule scale, with the earnings per car received on other commodities, from points in South Dakota to Omaha, Neb.

I might add that in connection with any scale which the Commission should prescribe as a result of this case, if they do prescribe any, the carriers would require 4th section permission due to the diverging lines of the railroad and would also like to have the privilege of grouping to such extent as may be necessary, points of origin to points of destination. While the company which I represent does not reach St. Joseph and Kansas City, it is my understanding that there is no objection to the grouping of Kansas City and St. Joseph on traffic from Nebraska. The reason I mention 4th section relief is that no distance scale can be worked out, as a practical matter, without an undue loss of revenue unless 4th section relief is granted.

(Exhibits C-277 to C-279, witness Flansburg, were received in evidence.)

Cross-examination.

By Mr. Dillman:

We contend that horses and mules are not embraced within the term "livestock" due to the Hoch-Smith resolution.

[fol. 994] Movements between different scale territories we apply the higher rates, regardless of the length of haul in the higher rated territory. One of the justifications is this: We are basing this scale in the first place upon the proposed rates of the western trunk-line carriers in 17000, part 2. If we were to carry that same percentage through the different scales shown in that proceeding, we would have a considerably higher rate basis than that proposed in this case. For example, roughly speaking, Missouri River and east is in Scale 1 territory. There is an interterritorial scale to apply between points west and points east of the Missouri River. Scale 3 is the local basis west of the Missouri River, and Scale 4 west of that. Scale 3 is 110 per cent of the Interterritorial scale. Scale 4 is 115 per cent of the Interterritorial scale.

In the Watertown case, west of the line of the C. St. P. M. & O. Railway from St. Paul to Sioux City, the Commission used the straight 100 per cent Fargo scale. East of that territory in Minnesota it is 88 per cent. Between the two territories the formula is very complicated, based upon the length of haul east or west of that line, and is really, to be exact, almost impossible of execution. We have come as near to it in complying with the order as it is possible to do. I don't think that would work out, as a general proposition. In the long run, whatever proposal is made we would have to comply with, naturally but we do not like to comply with the proposal of the South Dakota Commission.

[fol. 995] The distance from Hawarden to Omaha is 140 miles and the present rate is 22½ cents. That would remain the same. Alcester, S. Dakota is nine miles further distant and we are proposing to cut that rate and reduce it to 40 cents, and if, as a result of that, we secure increases of the rates from South Dakota to the Missouri River we will do everything we can to eliminate a situation which has been just as much of an eye-sore to the railroad as it has been to South Dakota. There would be a difference of

17½ cents, Alcester over Hawarden on a shipment to Omaha, for an added distance of 9 miles, and I agree that hump should be removed, but it should be removed in the proper direction. I think if we are given a reasonable maximum rate from South Dakota that we can take care of any of these situations by taking such steps as are necessary, from a legal standpoint, to get those freight rates up.

I don't think there is any movement of any kind or consequence from South Dakota to the Southwest or other points on our line in Nebraska to the Southwest.

The rates from Nebraska to Iowa points are not involved in this proceeding.

I can see no reason whatever why the rates in Kansas should not be on the same or a higher level than Nebraska, for the reason that the great amount of mileage of our line in Nebraska is in territory of very light traffic density. In [fol. 996] compliance with any order pertaining to distance scales it is practically impossible to work out a distance scale and secure anywhere near the measure of rates shown in that scale unless we have 4th section relief.

So far as transportation characteristics are concerned, I would say they have remained practically stationary for the past thirty years. Horses and mules have many of the undesirable characteristics of livestock. That is the empty car movement and the care that has to be taken in transit, and the feeding, and 28 hour law and things of that nature, and I think it is about time we get away from that relationship and establish rates on horses and mules on a basis that will give us some revenue for our transportation, and they won't be tinged with that feeling which comes to a carrier, or anybody else, where rates on products of agriculture are involved.

HENRY CHRISTIANSON, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

I am Commerce assistant of the Chicago, Burlington & Quincy Railroad Company with headquarters in Chicago.

My testimony shall deal mainly with the reopening of

Docket 13273, the Nebraska livestock case, and to a very slight extent with the South Dakota case. The result of my investigation has been embodied in an exhibit, consisting of [fol. 997] 22 pages, which I now offer.

The first page of the exhibit is a map of the State of Nebraska and portions of contiguous states. There have been indicated on this exhibit 2 blue lines, one running roughly from Sioux City, Ia., through Norfolk, Columbus, Grand Island and Hastings, Neb., to Superior. In the portion of Nebraska east of that line we suggest that the Commission prescribe scale 1, that scale having been introduced by Witness Flanburg in one of his exhibits. West of that line and to and including a line drawn from Valentine, Neb., on the Northwestern to Alliance, Neb., on the Burlington, then following the line of the Burlington — Sidney, Neb., and the line of the Union Pacific to the Wyoming state line, we propose scale 2, which has been submitted by the Witness Flansburg, and for application between scale 2 territory and scale 1 territory the scale 2 rates. In Nebraska, west of Valentine, Alliance and Sidney, we proposed scale 3. Scale 3 to apply also on movements to and from scales 2 and 3 territory. The previous witness has discussed at some length the reasons underlying the scales proposed, and I shall deal with that no further.

Sheet 2 of my exhibit is a statement showing cars and tons of livestock handled by the Chicago, Burlington & Quincy Railroad during the past five years. In 1927 we had 4,944 cars of horses and mules. We had a total of 186,329 cars of edible livestock. The movement of edible livestock amounted to 37 times the movement of horses and mules [fol. 998] on the Burlington.

Witness Ross, appearing for the Nebraska Commission and for the Omaha horse and mule interests, showed on page 6 of his Exhibit No. C-171 that 47.12 per cent of all shipments of horses and mules received at Omaha moved from points of origin in that state.

The Burlington has more mileage in Nebraska than any other railroad, over 2800 miles of its line being in that state. Page 9 of Ross's Exhibit No. C-171 shows that during the year 1927 the Burlington handled from all stations on its line into Omaha, Neb., a total of 57 cars, or at the rate of approximately 1 car per day for each 50 miles of railroad. Had all these shipments been tendered us at one time it

would not have made a good train load. Ross's Exhibit shows that there are at present 898,000 head of horses and mules in the State of Nebraska. Nebraska has a land area of 6,808 square miles. This is slightly less than 11.7 horses per square mile, or at the rate of 2.9 per 160 acres.

Witness Tedrow's Exhibit No. C-175 shows that the Nebraska horses are substantially more valuable than those of any other state west of the Missouri River with the exception of California and Arizona.

Sheet 3 shows yearly average prices for horses of various classes at the Chicago Stock Yards during the past five years. The authority for these figures are the Drovers' [fol. 999] Journal Year Book for 1928. It will be noted that the Chicago horse market in 1927, draft horses brought an average of $175.00 per head, express horses $150.00 per head, delivery wagon horses $125.00 per head, and for saddle horses, ranged in value from $150.00 to $750.00 per head. These figures are substantially different from those submitted by witnesses on the opposition, but indicate the enormous value of the transportation service in marketing these products.

Sheet 4 is a statement showing loss and damage claim payments on the Chicago, Burlington & Quincy Railroad, and on the Quincy, Omaha & Kansas City Railroad, a subsidiary of the Burlington, on carload business during the fiscal year ending June 30th, 1928. It will be noted the claim payments on horses and mules amounted to 6.2 per cent of the revenue which we received for transporting horses and mules during that fiscal year. The claims on horses and mules were approximately ten times as heavy as the claim payments on all traffic. The claim payments on all traffic being .6 of one per cent. The claims on cattle and calves amounted to 1.9 per cent of the revenue received for handling those commodities. The claims on horses and mules amounted to approximately 3 times the claim payments on cattle and calves in proportion to the revenue received for handling the traffic.

Sheet 5 sets forth statistics showing receipts of livestock at the Chicago stock yards since 1865. It will be noted that [fol. 1000] now in 1926, the last figures available, there were received at the Chicago stock yards 18,479 horses. With the exception of the year 1925 this is the lightest movement there has been in any year since 1883. The exhibit is sub-

mitted for the purpose of showing the falling off in this traffic. That the traffic in horses and mules is light as compared with that of other livestock. The number of head of cattle, calves, hogs and sheep received at the Chicago stock yards in 1926 amounted to 839 times the volume of receipts of horses at that market in that year.

Page 6 is a similar statement showing the movement from the Chicago market during the same period.

Sheet 7 is a statement showing the average loading of carload freight, by commodities, on the Chicago, Burlington & Quincy Railroad for the fiscal year ending June 30th, 1910, and the calendar years 1915, 1920, 1923 and 1927. During this period of 17 years the average loading of horses and mules has been between 11 and 12 tons. During that period the average loading of all commodities has increased from 24 tons to 29 tons.

When the Burlington is about to order new equipment, it, as a general thing, makes inquiries of its shippers to ascertain the kind of equipment which will best meet their requirements. When we have had occasion to build or to buy stock cars we have made such inquiry of our shippers. [fol. 1001] They have told us that the kind of equipment they want is 36 foot six inch box cars—stock cars I should say. They do not want any other equipment than that, or bigger equipment. They want these 36 foot 6 inch cars for the reason when the stock is loaded in such cars they get the benefit of the lowest minimum weight under the tariffs.

Sheet 9 is a statement showing actual short line and average mileages between Chicago, Illinois, and Missouri River points. So far as the Nebraska proceeding is involved, it was limited, as has been testified to, livestock traffic moving from Nebraska points to the Missouri River markets, Omaha, St. Joseph and Kansas City. The movement from the Missouri River to Chicago therefore does not come strictly within the issues of this proceeding, and this sheet may be regarded as being submitted as a matter of information only.

Sheets 10 and 11 show the present and proposed rates on horses, carloads, from, so far as this proceeding is concerned, Nebraska origins to Omaha. That is submitted to show what the affect would be if that scale should be extended to other points, such as to Chicago and to Denver. The movement to other than the Missouri River points,

however, is not here involved so far as Nebraska is concerned.

Sheets 12, 13 and 14 are comparisons of the proposed rates on horses, carloads, from representative shipping points in Nebraska so far as this proceeding is concerned [fol. 1002] to Omaha, with rates on other staple commodities moving in that territory. The remaining pages of the exhibit illustrate what the affect would be were the bases proposed extended to apply to Chicago and to Denver. Since such movements are not strictly within the scope of this proceeding, I shall offer no comment on those pages.

(Exhibit C-280, witness Christianson, was received in evidence.)

Cross-examination.

By Mr. Tedrow:

There is no good reason in my opinion why the rates in Nebraska should not be at least as high as those in Kansas. I am thoroughly convinced that in our proposal we have gone too low for Nebraska. I am offering no testimony on behalf of the Kansas lines, I am testifying for the Nebraska lines. There is cross country competition beween the Burlington and Rock Island along the line of the Kansas-Nebraska state line. We could check in a higher basis of rates on that line of the Burlington running west from Napier along the line of the Kansas-Nebraska state line, I mean a lower basis of rates on that line of the Burlington that would apply within Kansas, but we would dislike to be forced to do it. My remark in connection with page 3 of my exhibit with regard to the enormous value of the transportation service to the shipper of horses, is based upon the differences in the farm prices and the market prices of the commodity. The farm prices given by the witnesses for the Railroad Commission, and the market prices at the primary markets, using as the farm prices the data given by the Witness Tedrow and others. That would be true if all the animals on the farm were shipped. As I attempted to point out, very few of the animals on this farm are shipped. [fol. 1003] In Nebraska there were only 2.9 horses for 160 acres. It requires more than three horses to operate properly a 160 acre farm.

CHARLES FRANKENBERGER, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

I have heard the testimony of witnesses for the Rock Island, C. & N. W. and the C. B. & Q. Railroads. The Union Pacific serves the same origin territory to as considerable an extent as the lines named, and the rate situation obtaining over those lines is quite comparable with that obtaining over the Union Pacific. Those witnesses have in my opinion covered the rate situation quite comprehensibly, and I have no testimony to offer, but would like to adopt [fol. 1004] their testimony so far as it may be applicable for account of the Union Pacific. The Grand Island is a subsidiary, or a part of the Union Pacific, starts from Grand Island, Nebraska and runs down through Kansas to St. Joseph. The adjustment of rates upon the Grand Island if the rates in Kansas are on a higher basis than Nebraska is just one of the situations that will have to be ironed out. I think when the Commission prescribes the scale of rates they won't have any difficulty on that score.

I neglected to say that the Union Pacific has agreed to adopt the scales which have been suggested by the witnesses mentioned. We agreed to adopt the scales proposed for Kansas & Nebraska.

O. H. TIMM, was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination:

I am Commerce assistant for the Chicago, Milwaukee, St. Paul & Pacific Railroad with headquarters at Chicago, Illinois.

I will deal with the rates in Docket 12,268, which pertains to, in so far as this proceeding is concerned, on horses and mules from points in South Dakota to points in Minnesota, Iowa, Illinois, and such markets as Chicago, Omaha, Sioux City, Kansas City and St. Paul, Minn.

Since the reopening of this proceeding and also the other proceedings involved the other States, the carriers have given the question of proper rates on horses careful con-

sideration and, as has been stated by previous witnesses, we have arrived at a basis, as we see it, 45 per cent of first class. This is in comparison with other traffic that we handled in the same territory.

[fol. 1005] Exhibit No. C-281 consists of 12 pages marked "Statistical."

Page 1 is a map of the Milwaukee Railroad. On that map are circled the ten points in South Dakota with which I will deal in my testimony. The State of South Dakota being only involved in so far as the Milwaukee is concerned as an origin state in our proposal, is divided roughly, using the Missouri River from Mobridge down to Chamberlain, and the line then extends south to Valentine, Neb. East of the Missouri River we are proposing the scale two and west there of scale 3 basis.

On page 2 is shown the mileages in the different states in which we operate, and I want to call attention to the State of South Dakota, which is involved in this proceeding. Our mileage is 1795 miles. Out of this total we have but 303 miles of main line, the balance of that is secondary and main line. The percentage total secondary and branch lines is 83.1 per cent. It will be noted by referring to Exhibit 1, the map, that this is all branch lines. The main line is that of our pacific coast extension from Chicago and the twin cities to Seattle and Tacoma.

On page 3 and 3-A is the proposed basis, which has been explained by the previous witnesses.

Page 4 is a statement showing the number of cars and tons, and the average number of tons per car, of horses and mules and other commodities, with which I will deal, during [fol. 1006] the years 1923 to 1927, inclusive. I only want to call attention to the average number of tons per car of horses and mules and the light loading thereof as compared with the other commodities. The figure for 1927, horses and mules, is 11.7.

Page 5 is desnity of population of the United States, and the authority is shown at the bottom. I want to call your attention to the State of South Dakota as compared with the other states. The figures speak for themselves.

On page 6 I show the tons carried by the Milwaukee in South Dakota and other states east thereof. I want to call attention to the small tonnage handled within the State of South Dakota as compared with the other states.

Page 7 is density of traffic by states for the Milwaukee Railroad for the year 1927. I again want to call attention to the revenue, net tons per mile of road, both as to intra and interstate, South Dakota vs. The other states.

On page 8 is shown the density of roads in the western district for the years 1926 and 1927, and I again want to call attention to the density of the State of South Dakota for both years, being lower or less than any other state in the western group.

Page 9 is a statement of density for the Milwaukee Railroad as compared with the density of eastern and southern districts and the different districts, including the United States.

[fol. 1007] The western district shown there embraces the entire western trunk line and the north and south Pacific Coast territory.

On page 10 is a statement of operating revenues, expenses and other items for the years 1921 to 1927, inclusive, I only want to call attention to the last line. The rate of return. The Commission referred to the low spot and the low adjustment in western trunk line territory, and they, no doubt, had the Milwaukee in mind when they made that statement.

Page 11 is a reproduction of Mr. Wettling's Exhibit No. 310, introduced in the livestock case. I believe it has also been introduced by other witnesses in this proceeding. It was introduced for the purpose of showing the percent of empty of loaded on livestock cars vs. other equipment. Page 12 includes the Santa Fe to the extent of 12,121 miles.

I will now deal with Exhibit No. C-282. I have taken ten representative points in South Dakota. Exhibit No. C-282 deals with these ten points to Chicago, being the longest haul involved in this proceeding. I have compared the present rates with the proposed rates showing the revenue per car, the per car mile is cents and the per ton mile in mills, and these have been compared with other commodities. As I understand this proceeding, it involved all of South Dakota and it also involved Chicago as a destination market.

The information in connection with the data shown throughout my Exhibit No. C-282, as well as those follow-[fol. 1008] ing, should be compared with the number of cars handled, as shown on page 4 of my Exhibit No. C-281. The

points that I have selected are both east and west of the Missouri River and are typical of the entire state of South Dakota.

I want to call the Examiners' attention to the revenue per car on the present basis, as well as that used in the proposed basis, and that which we now earn on the other commodities, both as to per car and per car mile revenue.

My Exhibit No. C-283 shows similar information with respect to Sioux City.

Exhibit No. C-284 deals with Omaha.

Exhibit No. C-285 deals with Kansas City.

Exhibit No. C-286 deals with St. Paul.

With respect to Exhibit No. C-285, I have only taken 5 South Dakota points, for the reason that the horse and mule traffic does not move to Kansas City in the same amount as it does to the other markets, including Sioux City, Omaha, or Chicago.

To St. Paul I selected 5 points, including Millbank, Aberdeen and Mobridge, which are on our main line, Hastings, on the Dakota division, and Lemmon, South Dakota, on our Trans-Missouri division, a point west of Mobridge, or west of the Missouri River, and also South Dakota.

On Exhibit No. C-287, I have compared the present and proposed rates from same points as used in my preceding [fol. 1009] exhibits to the different markets, and have compared them with rates from Chicago and St. Louis to points in central and western trunk line territory. Horses and mules in central territory either move on second-class rates or commodity rates. We are proposing 45 per cent of first-class. And where the horses and mules in eastern territory move on second-class, they move on 85 per cent of the first-class rate, and there are movements under the rates that I have shown.

We are advised that there are horses and mules moving out of Chicago and to quite an extent out of St. Louis. St. Louis is a large horse and mule market.

On page 1 of Exhibit No. C-287 I only want to call attention to one rate. We are proposing a rate of 79 cents. Yankton to Chicago, a distance of 569 miles. For a haul of 525 miles from St. Louis to Cleveland the rate is 84½ cents. From St. Louis to Pittsburgh, 612 miles, the rate is also 84½ cents.

Page 9 of Exhibit No. C-281 deals with traffic densities.

By referring to the Milwaukee density for the system as a whole I want to compare that density with the Pennsylvania Railroad, which is approximately four and a half times greater than that of the Milwaukee. Yet there is at the present time a higher adjustment in effect. Those rates shown on the first page of that exhibit are all commodity rates.

On page 2 of Exhibit No. C-287 I want to call attention [fol. 1010] to our proposal from Murdo Mackenzie to Sioux City, 279 miles, we are proposing 55 cents; comparing that with the rate from Chicago to Cincinnati, 285 miles, we find that the eastern lines apply the second-class rate of 68½ cents. Similar comparisons are shown on the other pages. Claim payments on horses and mules, Chicago, Milwaukee, & St. Paul system, 1926, the average per car was $5.34; for the year 1925, $4.59 per car.

We believe therefore that in comparison with the adjustment on the other classes of traffic that we have used, applicable in western trunk line territory, and comparing horses and mules in the western states with that applicable in the eastern territory, that we haven't gone beyond that of reasonable proposal.

Cross-examination.

By Mr. Tedrow:

We believe that for the present class A will be a reasonable basis. Exhibit C-287, the Column A at the left of the page refers to the present rate and B is the proposed rate.

In determining secondary from main line and from branch line, the determining factors are the operating and transportation conditions and the amount of tonnage involved; where we have daily service and where we have bi or tri weekly service.

On page 7 of this exhibit I have spoken of conditions of traffic density, South Dakota vs. the other states. I merely want to show the little traffic that we now handle in South Dakota, and in comparison with the traffic that we are entitled to more revenue.

[fol. 1011] Minnesota, if you will refer to page 2, Exhibit C-281, has 500 miles less of tracks on the Milwaukee, but it receives much traffic, that is through traffic, from connect-

ing lines, which is not true in South Dakota. You will note the disparity in the tonnage handled in South Dakota, state vs. Interstate, indicating that all traffic is brought up by reason of the overhead, or the through tonnage. That includes the tonnage going to the Pacific coast, moving in either direction.

There is always consideration given as to volume of traffic; we feel that where there is little movement that somewhat higher basis should prevail.

(Exhibits C-281 to C-287 both inclusive, witness Timm, were received in evidence.)

Examiner Carney: Any rebuttal?

Mr. Tedrow: I want to say that in adjusting these rates they ought to be adjusted simultaneously with the interstate rates. The state rates ought to be adjusted at the same time as the interstate rates.

(Whereupon, at 5:30 o'clock P. M., October 5, 1928, the hearing in the above entitled matter was closed.)

[fol. 1012] Before the Interstate Commerce Commission.

Docket No. 12358 and cases grouped therewith.

(Titles omitted)

Kansas City, Mo., May 26, 1932.

Before: Myron Witters, Examiner.
Met pursuant to notice.

APPEARANCES

(Omitted, being as recited in 195 I. C. C. 417.)

PROCEEDINGS

Exam. Witters: The Interstate Commerce Commission has set for hearing at this time and place "Western Horse and Mule Rates", No. 12358 and others. The last order in this case I have before me. It is dated February 11, 1932, and reopens the proceedings for further hearing. I will read this order.

"By the attached order the above-entitled proceedings are reopened for further hearing. The primary purpose of the re-hearing is to show upon the record the changed conditions in the field of railroad operations and the horse and mule industry, in so far as those conditions may affect the rates to be here prescribed.

"A comprehensive record has already been made in these proceedings, so that it should not be necessary to undertake a retrial of the issues already well presented in these cases, and it is apparent the most valuable showing will be as to changes in conditions. Evidence of a merely cumulative character on matters already covered by the present record should be avoided. The parties should carefully consider the available facts and endeavor to present at the hearing only those essential to a decision.

"No. 17000, Part 9, Live Stock Western District Rates, 176 I. C. C. 1, also has been reopened for further hearing, and duplication of effort may be avoided by the use herein of the new evidence in that proceeding, whenever possible, in the manner prescribed by the Rules of Practice."

[fol. 1013] Mr. King: The order is attached to that notice. The order says the case is reopened in all respects.

Exam. Witters: Yes, that's correct. What I read was the notice, and the order reopens the proceeding in all respects.

Mr. Thompson: Mr. Examiner, regarding that notice that you just read to some extent our evidence in this case will conform very closely, if not altogether, with that that we shall later present in the reopened livestock case, Docket 17000, Part 9; but we have previously insisted and still maintain that there are material differences between the traffic and transportation conditions incident to horse and mule traffic and those incident to edible livestock traffic and in some respects our evidence here will differ from that that we propose to introduce in the livestock case later on—that is, the edible livestock case.

Complainant's Evidence.

D. L. KELLEY, called as a witness and, having been previously sworn, testified as follows:

Direct examination:

I qualified in the 12268 South Dakota case. I am in charge of the rate and transportation departments of the Board of Railroad Commissioners of the State of South Dakota. I might explain how we came to be in this proceeding.

[fol. 1014] We have no complaint in the case. The western trunk-line and the South Dakota railroads have made no request for a change in the South Dakota horse and mule rates.

This is primarily a southwestern case. One of the southwestern complaints contains an issue of alleged undue prejudice in rates, southwestern shipping points versus Nebraska, to the markets there involved. Nebraska was involved through an issue of undue prejudice.

South Dakota was not involved, directly or indirectly, through a complaint or through an allegation of undue prejudice. But since the Nebraska livestock rates, involved in the Nebreska case, were related in a measure with the livestock rates that had previously been prescribed from South Dakota in 12268, the commission of its own volition included the South Dakota adjustment in these cases.

We have been dragged in here by the hair. There is no complaint from us. There is no demand from the South Dakota or western trunk-line railroads for a change in the South Dakota rates.

Our horse and mule rates were related to a substantial degree in 12268 with the horse and mule rates from the adjacent territory, particularly Iowa. It was our suggestion in the original proceeding, which we repeat here, that under the circumstances existing, as I will develop in my testimony, with no movement into the Southwest, no competi-[fol. 1015] tion that I can find between South Dakota horses and mules and those in the Southwest, that our rates ought to be left out of the case and adjusted later on when you have occasion to adjust the rates from Iowa and Minnesota and South Dakota and the balance of western trunk-line territory.

In connection with my presentation, Mr. Examiner, I have caused to be compiled two exhibits; One, No. C-288, dealing primarily with economic phases of the situation, and a larger one, No. C-289, dealing primarily with the rate, transportation, and related matters.

Exhibit C-288, page A-1 is a reproduction in toto of a recent report of the United States Department of Agriculture, dealing with livestock on the farms in South Dakota and in the United States. Most of the details are self-explanatory, but I want to call particular attention to the tabulation on the right-hand side of the page which shows the comparative value of horses at the present date versus prior years.

The average South Dakota value in 1930 was $53 per head; 1931, $45; 1932, $36. And, as I will show later, even those average estimated values are high rather than low, compared with actual selling prices. So also with horses and mules; there has been a substantial decline in value.

I want to call attention also to the fact that the volume of mule production and shipments is very limited compared with horses, horses generally being the more valuable of the two classes of stock.

[fol. 1016] If I said anything different than what is shown on the exhibit, the exhibit should be followed.

The other details of page A-1 are self-explanatory.

Page 1 is a reproduction of certain pages of a recent report of "Crops and Markets," and it is offered to show the comparative value of horses and mules in South Dakota and in other states, 1931 versus 1930, and to show also the comparative values of other farm products for the same period of time.

The bottom part shows the range of prices for the period from 1909 to September, 1931, which shows the date covered by the report. Down at the bottom, you will find under each of those commodities the range of average values over that period of time; and you will note, for example under "Horses" that the average 5-year value, 1909 to 1914, for the United States, as a whole, is $142. That value has steadily shrunk until on the date of the report, the last date of the report, the average value was $60. That's for the United States. Our values are even lower.

Pages 2, 3, 4, 5, 6 and 7 are copies of recent reports in their entirety, issued by the representatives of the U. S. D. A. and the South Dakota Department of Agriculture, showing crop and economic conditions in the state of South Dakota. The details are largely self-explanatory.

Summarizing, however, we have had, during the past two [fol. 1017] years especially, the most unfavorable conditions in the history of the state. The prices of most of our

commodities are the lowest of a generation. In addition to that, we have had, especially last year, the most severe drought in the history of the most of the population of the state, and, in addition to that, a large part of our area was devastated by grasshoppers.

For example, I conduct rather extensive farming operations in the territory. Last year I had in 800 acres of crop—and I am not citing this to indicate my own position but that of people in the territory as a whole. Out of that 800 acres of crop, I didn't get a peck of grain of any kind; I didn't get a forkful of fodder. A good share of the farmers in that territory have received help from the Red Cross.

There was a survey made by the State Department of Agriculture of the condition of 3,720 farmers scattered throughout the state of South Dakota. In the east of the river district, 65 per cent of the farmers required loans or help, and most of them got help.

Page 9 is offered to further indicate the unfavorable economic condition in the territory and shows the purchasing power of South Dakota farm products in terms of commodities bought for a period, 1923 to 1931. The details are self-explanatory.

Page 10 contains a somewhat similar study, indicating [fol. 1018] purchasing power of our principal grains.

Page 11 contains a similar study showing the price index of the purchasing power of our principal classes of livestock.

Page 12 shows the total cash income from farm production and purchasing power, 1913 to 1930. I will have some later figures showing the continuation beyond 1930.

Page 13 shows the number of farm mortgage foreclosures in South Dakota in the particular counties mentioned for the period, 1913 to 1930 and the first part of 1931.

Pages 14, 15, 16, 17, 18, 19, and 20 consist of a reproduction in its entirety of a recent report of the United States Department of Agriculture, Bureau of Agricultural Economics, showing the average prices of farm products received by producers in South Dakota and in other states during recent years, with a comparison with similar data for the so-called base period, 1909 to 1914.

The first page, for example, shows the situation for the United States as a whole. Under "Horses", you will note that the 5 year base average price was $142. February, 1932, the average price was $58; considerably less than half of the base period average price.

So also with mules. The base period price was not shown, but the present average price is $65.

For all farm products combined, the latter section, you will note that the present average prices are 60 per [fol. 1019] cent of the base period price; grain, 51; meat animals, 65, and so on down the list. Whereas the prices paid by farmers average 121½ per cent of the base period price.

Other details are self-explanatory.

The five year base period, August, 1909 to July, 1914 was before the War. The war didn't start until 1914 and the heavy purchases by the French and British Government were not made until considerably after that date, according to my information. I may have something on that later on.

Page 17 shows the details of the prices of horses and mules and also edible livestock by states as of February 15, 1932. You will note there for that date the average South Dakota price of horses per head was $43; mules, $51. I also suggest you compare the average values of the South Dakota horses and mules with the average values in the other territories.

Note, please, that the average value of horses in official territory, the first section, trunk-line territory, is $106.94 compared with $43 in South Dakota. These are different animals.

So, also, with the c. f. a. territory. The average value of horses there is $82.26. Other details are self-explanatory.

A word further regarding the economic situation. According to a U. S. D. A. report dated March 16 the average land values in South Dakota are 25 per cent lower than a [fol. 1020] year ago, and 38 per cent lower than the pre-war valuation.

Another report, Bureau of Economics, dated March 1, contains the following summary:

"The prices of farm products in mid-February averaged 60 per cent of the 5-year pre-war average. The average unit exchanged value of farm products in terms of com-

modities bought by the farmers was about 52 per cent of pre-war."

I would like to have the examiner consider such facts in connection with the comparative rate levels at the present time versus the pre-war period. Our rate levels are far above the pre-war period, our values far below; still we have proposals here to increase our present rates. The last available agricultural bulletin of the United States Department of Agricultur-*al* Bureau of Agricultural Economics is dated March 1, 1932.

Citing briefly from "South Dakota Agricultural Outlook for 1932," issued by the Extension Service of the South Dakota State College in conjunction with the U. S. D. A.; page 9:

"Conditions indicate that prices of farm products in 1932, taken as a whole, will not average so high as in 1931, although prices at harvest time should not be much different from harvest time last year."

And those last-year prices, as I suggested, in many instances are the lowest on record. We have entered 1932 in a very bad situation. As I previously suggested, the ma- [fol. 1021] jority of our farmers were required to secure help during the current winter.

I have been in the State of South Dakota, Mr. Examiner, for something over 20 years. I am familiar with a great many phases of the situation. In my work with the Railroad Commission, I keep in contact with various phases of the public activities there and the general conditions in the State.

In addition to that, I have been a bank director for a considerable period of time and keep in touch with it in that way. In addition to that, I conduct extensive farming operations in three different sections of South Dakota—one west of the river, one in Hughes County in the central part of the State, and one in Hyde County toward the eastern part of the State.

Through my activities in that connection, I know pretty generally what is going on. I know scores and scores of the farmers in the territory. I know what the condition is. I know them personally. I know what the condition was, for example, last winter. The Red Cross was com-

pelled to extend its activities throughout the general territory.

Thousands and thousands and thousands of carloads of materials and foods of different kinds were shipped into the State. The railroads were courteous enough and broad-minded enough to transport some of that stuff at reduced rates; they know what the facts are. In addition to that, [fol. 1022] the farm board was compelled to donate I don't remember now how many million bushels of grain for the use of farmers in that territory. Hundreds, and I believe it would be well over thousands, of carloads of that stuff was shipped in there and donated to the poor to help them carry their livestock through. And in several other respects it was necessary, through contributions from adjoining States and so on, to keep those poor devils from starvation. These contributions were direct charity from the country, from the Red Cross, from the farm board, and help from outside sources and different cities in Iowa.

Here is a further statement from Exhibit C-290 "South Dakota Agricultural Outlook for 1932," a public document:

"The weather in South Dakota for the crop year 1930-31 can be described as a combination of extremes in high temperature and low rainfalls. A winter of record-breaking mildness, with precipitation much below normal, furnished the setting for a summer characterized by extremely high temperatures, scorching hot winds and continued drought. The result was that average yields per acre of all crops were among the lowest in the history of the State."

I referred briefly to the devastation by grasshoppers. We are faced with the same situation this year.

Referring next to Exhibit C-289: Since the hearing in the previous case, Mr. Examiner, there have been various changes in the general rate structure in the western territory.

Some of the parties are suggesting that horse and mule [fol. 1023] rates be related to livestock rates. Since the prior hearing the rates on livestock in the western territory have become entirely changed. It becomes necessary to outline the changes in that respect. Some of the other parties are suggesting that horse and mule rates be related to the class rates, and since the prior hearing the

class rates have been changed; and those matters ought to be explained here.

Pages 1 and 2 are maps illustrating the location of the different stations referred to, the different markets, the location of the different railroads, etc., and they are self-explanatory.

Page 3 is self-explanatory.

Referring next to page 4: In the prior case the claim was made that the rates on horses should substantially exceed those on cattle for various reasons, including the comparative volume of the movement of horses versus edible livestock and on account also of the alleged differences in the loading.

We have since investigated the carriers' claims and the facts regarding the comparative volumes of movement and loading, in so far as South Dakota is concerned, and the data are shown on page 4 for a 3-year period. Data are taken from the figures cited by the carriers themselves in their annual reports to the Board of Railroad Commission.

The Statement shows the number of carloads of horses, fat cattle and single-deck hogs and sheep originated in [fol. 1024] South Dakota during the years indicated by the principal South Dakota lines. In so far as the volume of movement is concerned, that on horses is less than on cattle and hogs but is greater than on single-deck sheep.

The volume of the movement of horses and mules has always been less than the volume of movement of edible livestock, even during the period of time when these railroads voluntarily in our territory maintained rates on horses and mules the same as on edible livestock.

In so far as average loading is concerned, for each of the years shown the average loading of horses exceeded the average loading of fat cattle and, of course, greatly exceeded the average loading of single-deck hogs and sheep.

In the South Dakota and in the Nebraska cases, the commission fixed rates on hogs, single deck, 115 per cent of the rates on cattle, the hog minimum then being 17,000 pounds generally for a standard car, later reduced to 16,500. So that the commission in the prior case fixed rates on horses loading around 23,000 pounds on the same basis it fixed rates on single-deck hogs loading around 16,500 pounds and 17,000 pounds.

In other words, horses were given the same rates as single-deck hogs despite the fact that in 1930, for example, the average loading of horses, 11.58 tons, was 32 per cent higher than the average loading of single-deck hogs, 8.77 [fol. 1025] tons. The horse loading exceeded the single-deck sheep loading over 60 per cent. The situation for the prior years was substantially similar.

Other details are self-explanatory.

Referring next to page 4-A: Another ground advanced by the carriers for differentiating horses and mules from edible livestock is the matter of value. Since the prior hearing, I have carefully investigated that feature of the situation.

Originally, and for many years, the w. mt. l. carriers maintained rates on horses the same as, or only slightly in excess of, the rates on cattle. Details later. During all that period of time the differences in value, horses versus cattle and other edible livestock, were wider than the present differences.

For example, in 1910 the average price of horses in the United States was $108.19, while on cattle the average price per head was $19.41. In other words, the average price of horses was 560 per cent of the average cattle price. During that period of time, Mr. Examiner, most of our railroads in this territory voluntarily maintained the same rates on horses as on cattle.

In 1932, on the other hand, the average U. S. price of horses had decreased to $53.37—still lower than that in South Dakota—whereas the average price of cattle had increased to $26.64, the ratio of the value of horses to cattle being in 1932 200 per cent compared with the 1910 [fol. 1026] ratio of 560 per cent.

Now, that may offhand appear to be quite a difference in value, horses versus cattle. I will explain that further a little bit later on, but I want to suggest at this time that there is hardly an item in the classification where there are substantially wider differences in value on the same commodities that take the same rates, and you can start with your acids at the beginning of the classification and find the same rates applying on acids, for example, with a substantially wider range of values; and you can go on through the classification until you get to yarn and beyond and find the same rates applying on that commodity with a substan-

tially wider difference in value than the present differences between horses and cattle.

Again, the 1932 value of horses was but 49 per cent of the 1910 value of horses, approximately one-half, whereas on cattle the 1932 value was 138 per cent of the 1910 value. While the 1932 value of horses per head was about double that of cattle, the actual difference in value, per carload, is not as great as the difference in value per head. I will show later detailed figures regarding the actual selling prices of representative carloads of horses.

In an early case involving rates on horses and mules from the Northwest, I and S. 137, 26 I. C. C. 47, entitled "Rates on Horses and Mules from Kansas," decided in 1913, reference was made to the claimed value on horses [fol. 1027] at $3,300 per car. The average loading of ordinary mature horses in the Northwest ranges generally from 20 to 25 head. Assuming an average loading of 23 head, which rather overstates the actual average loading, the value of a carload, based on the 1932 South Dakota price of $36 per head, is but $828—substantially less than the value of an average carload of fat cattle. And I will show later that even that $36 per head is a high price and overstates the average value of South Dakota horses.

Based on the average U. S. 1932 price of $53.37 per head, the value of a carload of 23 head would be $1,227.51. Taking a carload of fat cattle, 6 cents at the market, loading 22,500 pounds, the average value would be $1,350.

The point I wish to stress is that the carriers, in originally establishing rates on horses, disregarded differences in value, horses versus cattle, very much greater than the differences that now exist.

Since the close of the record in the prior hearing, I have also personally made a very careful investigation into the matter of value of the general run of horses and mules shipped out of South Dakota. I conduct fairly extensive farming operations in South Dakota, and I have had occasion to both buy and sell horses personally.

During the past two or three months, for example, I have purchased nine head of fair-grade farm horses weighing between 1,000 and 1,300 pounds, at an average price of $30 per head. And I got hit pretty hard at that compared [fol. 1028] with the general average selling price. I have also sold a few somewhat lighter horses at $15 per head.

I have also been in touch with sales and purchases of horses in the territory and have personally examined the original records of some of our shippers. I have with me typical original accounts of sales covering shipments of horses and mules forwarded from Pierre and from Ft. Pierre to different markets.

On one lot of 3 cars, 69 head, shipped from Pierre to St. Louis September 2, 1931, ranging in weight from 1,000 to 1,350 pounds, the gross receipts received totaled $1,745.50; the freight costs were $411.70; yardage, $24.15; feed, $155.25; commission, $165; insurance, $17.35—or a total shipping and selling expense of $802.92. The net proceeds were $892.58—an average of less than $13 per head, which represented all that the shipper received to cover the origin cost of the horses. Those horses were shipped from Pierre to St. Louis.

On another shipment of 30 head, forwarded on September 29, 1931, from Pierre to St. Louis National Stockyards, the gross amount realized was $457.50, an average gross of about $15.20, out of which had to be deducted freight of $150.01, yardage of $6.65; commission, $73.50; insurance, $5.25; and, feed, $43.75. The net for the whole carload amounted to $178.34 or a little less than $6 per head, which [fol. 1029] covered all that the shippers received for the horses over and above the actual shipping and selling expense.

I have additional invoices covering other shipments, some of which were well-broken work horses ranging up to 1,300 pounds in weight. On one lot of 14 head the average price realized at destination was $47.78; total for the car, $669; out of which had to be deducted all shipping and selling expenses.

A bunch of yearling and 2-year-old colts brought a gross average of $29.47 per head, total $610, out of which selling and shipping expenses similar to those previously recited had to be deducted.

On another shipment of 40 head, forwarded from Pierre, to Zanesville, Ohio, the latter part of March, in C. St. P. M. & O. car 26277, the gross amount realized was $1,208.50; $32 per head gross. The freight and feeding charges en route amount to $407.84. Total expenses, including commissions, feed at destination, etc., aggregated $637.84. The net was $570.66, or $14.25 per head, which represented all

that the shipper received over the selling and shipping expense. The commission was $125; freight bill, $409.93.

I direct particular attention to these figures showing actual values of the average run of commercial horses shipped from this territory account of the value figures shown in the [fol. 1030] carriers' evidence in the prior case. The brief of the western trunk-line carriers, dated January 15, 1929, shows the then existing top values of exceptional classes of horses at the Chicago market, the values there shown, for 1927, being $175 per head for draft horses, $150 per head for express horses, $125 for delivery wagon horses, the saddle horses ranging up from $150 to $750. Such values are in no manner typical of the average run of horses from the Northwest and South Dakota particularly.

The standard rates under investigation apply only on the common grade of horses with a declared value less than $150 per head. It is my judgment that there is only a fractional part of 1 per cent of the general run of western horses that are worth anything near such figures.

Page 4-A, referring particularly to Part 2: You will find there the details for South Dakota from 1916 to date. The decline in the average value was from $93 *to* 1916 to $36 in 1932, and, as I have hown, that $36 very probably substantially overstates the actual average values.

Referring just briefly to Part 4 of the same page: On horses the 1932 value is just 49 per cent of the 1910 value. On cattle the 1932 value is 138 per cent of the 1910 value.

Page 5 is self-explanatory.

Referring to page 6: The western trunk-line carriers have taken the position that the rates on horses and mules [fol. 1031] should not be related in any way to the rates on other livestock, including cattle. Their reasons for now taking that position are outlined in their brief of January 15, 1929, page 21. We differ sharply with the carriers on this point and believe there is every reason why rates on horses and mules should be the same as, or very closely related to, the rates on edible livestock, particularly fat cattle. Since the prior hearing, we have made a careful study of the situation.

Important western trunk-line carriers originally, and for a great many years, maintained the same rates on horses as on cattle. On cattle, the rates were generally named in cents per hundred pounds because the great bulk of the

cattle moved to market points where they could be weighed. The rates on horses were frequently stated in dollars and cents per car because a considerable proportion of the horse and mule traffic moved under circumstances which made it difficult to weigh.

The separation that took place in the rate levels, horses and mules versus cattle, was occasioned largely by the fact that in some of the early livestock cases, including No. 12146, National Live Stock Shippers' League, 63 I. C. C. 107, 118, there were involved primarily the rates on edible livestock only and not on horses. The separation was incidental and unwitting on the part of the railroads themselves; and I am referring particularly, of course, to the [fol. 1032] w. t. l. situation. I am not talking about the Southwest.

Never, to my knowledge, have the w. t. l. carriers up to the inception of these cases claimed that rates on horses and mules ought to be unrelated to rates on edible livestock or that they should be Class A or any other per cent of first class.

From practically every standpoint usually considered in determining rates and rate relationships, rates on horses and mules should be closely related to or the same as, the rates on edible livestock.

Horses and mules are produced in much the same manner as cattle. Nearly every farmer raises a few extra horses for sale as he does cattle. Present values on horses, mules, and fat cattle do not now differ in even the degree they differed when the railroads voluntarily carried the same rates on the two classes.

Ordinary shipments of horses are generally made in the same class of equipment as ordinary cattle, i.e., common stock cars. They move largely from the same general origin territories. They are loaded through the common stockyards of the railroads in the same manner as cattle. They are subject to generally the same regulations that govern the movement of cattle. They ordinarily move in the same trains as other freight, including edible livestock.

A large proportion of the South Dakota horse shipments moves to the same markets as does the edible livestock, including Chicago, St. Louis, Sioux City, South Omaha, and [fol. 1033] South St. Paul. On arrival at those stockyards points, they are unloaded and handled in much the same

manner as edible livestock, The loading, however, on horses is generally somewhat greater than the loading on fat cattle, much greater than the loading on fat hogs, single deck, although under the decision in 12268 horses were given the single-deck basis of rates.

Claim payments on horses, in some instances, are slightly greater than on other livestock, but the difference, where it exists, is much more than covered by the present 15 per cent differential in rates.

The carriers refer to the alleged limited volume of movement of horses. Other sections of the exhibit show, however, that the volume of the horse movement from South Dakota substantially exceeds the volume of the movement of sheep, although sheep are given rates that are relatively much lower than those now accorded horses. The earnings are much lower, I should have said.

The carriers next suggest that rates on edible livestock are influenced by conditions that do not influence rates on horses, the only circumstances mentioned, however, being the alleged influence of the rates on fresh meats and packing-house products on the edible livestock rates.

The edible livestock 17000, 9, rates were made with no particular consideration of rates on fresh meats or packing house products. As a matter of fact, fresh meats and pack- [fol. 1034] ing house products are shipped from only a very limited number of points, whereas edible livestock and also horses and mules are shipped from a great number of points.

The packing-house products rates from South Dakota points to the different markets were not, I believe, even cited in the general livestock case, and the present livestock rates from South Dakota to the different markets differ substantially from the rates on fresh meats and packing house products.

For example, in South Dakota we have perhaps 400 local stations from which livestock rates were published. We have in the State of South Dakota only three points at which important packing houses are located—Sioux Falls, Huron, and Watertown—and those rates weren't even considered in fixing the 17000 edible livestock rates.

Referring further to page 6, part 1.

That contains a brief outline of the relationship of horses and mules to cattle during the period in which that tariff

applied, 1898. The tariff covered rates between points in South Dakota, Minnesota, Iowa, Nebraska, Wisconsin, etc.

There you will find, for example, that the horse and mule rates were named in dollars and cents per standard car; 100 miles, $36.30. The rate on cattle was 16½ cents per 100 pounds; the minimum was 22,000 pounds. And the earnings under that 16½ cent rate, minimum 22,000 pounds, were just exactly the same as the earnings for the horses [fol. 1035] and mules, which are named in standard cars; the same all the way through.

Take in Item No. 2, showing the situation on the North Western a little bit later, in 1903. Your 5-mile horse and mule rate per car, standard, was $11. Your rate per hundred on cattle was 5 cents, minimum 22,000 pounds, $11. And so forth and so on.

In some cases there might have been some slight variations, but generally those roads maintained voluntarily and for a great many years the same rates on horses and mules as on cattle, despite the fact that during that period of time there was a far greater difference in value as between horses and fat cattle than there is today. During that period of time the standard car was 30 feet 6 inches. At the present time the standard car is 36 feet 6 inches.

Part 3, shows the situation on the Milwaukee in 1891. That road provided in the territory indicated that the rates on horses would be 110 per cent of the rates on cattle. That was the greatest difference existing on the roads in that territory.

And Part 4 shows what was on the C. St. P. M. & O. in 1901; the same as in Items 1 and 2. Most all railroads, as I recollect, have eliminated all rates for cars under 36 feet 6 inches long, stock cars.

I am talking about w. t. l. and South Dakota. We have [fol. 1036] no competition with the Southwest. We don't care what your rates are. We think we shouldn't have been dragged into the case, but since we are here we want to defend our rates.

Referring next to pages 7 to 15: Subsequent to the prior hearings in these horse and mule cases, the commission has decided the general livestock case, Docket 17000, Part 9, involving rates on edible livestock between all points in the western district.

Since under prior adjustments the rates on horses and

mules have frequently been the same or have been closely related to the rates on cattle, I have, in subsequent pages, 7 to 15, dealt particularly with the new rates on edible livestock and the relationship of the horse and mule rates thereto.

Page 7 shows briefly the fat cattle rates established in the different sections of the western district in 17000, 9; also the fat cattle rates established in official and in Southern territories. The details are self-explanatory.

Referring next to pages 8 to 11, a continuation of the same study. Our horse and mule rates to Chicago and related points in Illinois and Wisconsin are among the most important to us. The decision in 17000, 9, brought about general and serious increases in the edible livestock rates from South Dakota and also from various other points in the western trunk-line district to Chicago, Milwaukee, and [fol. 1037] the many related points in Wisconsion and Illinois, also to St. Louis and related points.

Pages 8, 9, 10, and 11 show the former and the 17000, 9, rates on the different classes of edible livestock from all stations on the C. M. St. P. & P. Railroad in South Dakota to Chicago. That line serves practically every section of South Dakota, and the rates shown are fairly typical of the entire adjustment from the State. The wide-spread and serious increases in the edible livestock rates are clearly evident.

Page 11 contains a summary of the rate changes. The commission had previously considered and established maximum rates on edible livestock and also on horses and mules from South Dakota to the several markets in the South Dakota case, I. C. C. 12268, 77 I. C. C. 451. In that proceeding, on a rather limited record in so far as horse and mule rates are concerned, it established a relationship, horses and mules over fat cattle, of 115 per cent.

Immediately prior to the decision in 12268 there had been no uniform relationship in the rates of horses and mules versus cattle. Originally, and for many years, horse and mule rates had been either the same as on cattle or about 110 per cent thereof; see page 6. But owing to the difference in treatment in the rates on cattle versus horses and mules in several of the livestock cases, the original parity on close relationship has been disrupted.

[fol. 1038] The 12268 decision produced both increases

and reductions in the horse and mule rates in South Dakota. Our people were not satisfied with the 115 per cent basis on horses, but since the 12268 adjustment, as a whole, especially on edible livestock, constituted some improvement over the prior adjustment, it was thought advisable to let the horse and mule feature ride until some future time. It is now our position that the 115 per cent relationship prescribed in 12268, regardless of its propriety when 12268 was decided, is not now a proper basis or relationship of rates on horses versus edible livestock.

In a later section hereof, we are suggesting that if it is necessary in these cases to revise the South Dakota rates on horses and mules, which we do not believe is necessary, the rates thereon from South Dakota should be not more than 110 per cent of the 17000, 9, fat cattle rates, that being the greatest of the differences that the railroads in South Dakota and adjoining w. t. l. States originally exacted on horses and mules versus cattle.

That's the adjustment on the Milwaukee, where the basis was 110 per cent. We think, as a matter of right, the rates on horses shouldn't exceed the rates on fat cattle.

The value of horses has seriously declined since 1921, 1922 and 1923, which was the period covered by the record in the 12268 case, both actually and relatively compared with cattle. In 1921 average U. S. price for horses was $84.31, while the 1932 value was $53.37; page 4-A. The [fol. 1039] average South Dakota price declined from $52 in 1923 to $36 in 1932.

Page 11, contains a summary of what happened to our livestock rates from South Dakota to Chicago as a result of 17000, 9. Note on fat cattle, for example, there were 216 increases. The increases aggregated 216 increases. The increases aggregated 216 cents; the reductions aggregated .9, with the total amount of the increases in dollars and cents as $6.30. The total amount of the reductions was 16 cents. And similar situations with other classes of edible livestock. This refers to rates to Chicago, and that is typical of the situation at points in Illinois, Wisconsin, and eastern w. t. l. territory. That is our most important destination area for horses and mule shipments.

Referring to pages 12 and 13, they show graphically the present general level of horse rates from representative

points along typical South Dakota lines to St. Louis and to Chicago. The graphs also show the horse and mule rates that would result from the application thereon of 110 per cent and 115 per cent of the 17000, 9, fat cattle rates.

Page 12 shows the situation from points along the Milwaukee line to St. Louis.

It will be noted that the present horse and mule rates very substantially exceed, throughout the entire territory covered by the graph, the 17000, 9, fat cattle rates. At Mitchell, for example, the present horse and mule rate, [fol. 1040] 52½ cents to St. Louis, is 4½ cents per hundred weight or about 10 per cent higher than the 17000, 9, fat cattle rate. The difference at Redfield is 3½ cents or about 7 per cent. At Aberdeen the difference is 5 cents per hundred weight or about 10 per cent. At Mobridge, the difference is 6 cents per hundred weight or about 10 per cent.

If the horse and mule rates are readjusted uniformly 10 per cent over the 17000, 9, fat cattle rates, limited reductions would occur from the territory south of Mitchell, increases would occur between Mitchell and Aberdeen, and limited reductions would occur west of Aberdeen. Rates 115 per cent of the 17000, 9, fat cattle rates would substantially increase the present horse and mule rates from practically all points in South Dakota. Other details are believed to be self-explanatory.

Page 13 shows similar information with respect to the rates to Chicago from points along a representative line, i. e., the Milwaukee, extending west through Mason City and Mitchell to Rapid City.

Under the adjustment in effect, to Chicago, between the decision in 12268 and that in 17000, 9, the rates on horses and mules from South Dakota were based 115 per cent of the fat cattle rates. From the territory east of South Dakota to Chicago, there was, however, no uniform basis. In some instances the horse and mule rates were about [fol. 1041] the same as the cattle rates; in some instances they were lower, and in some instances higher. The cattle rates themselves were frequently on a very nonuniform basis.

Note, first, on page 13, the present rates on horses and mules to Chicago. The adjustment is characterized by the

large grouping that is typical of the Missouri River-Chicago adjustment on horses and mules. West of Canton, S. Dak., the rates are graded up rapidly. In all instances, the present rates on horses and mules substantially exceed the 17000, 9, rates on fat cattle.

At Canton, just east of Sioux Falls, which on livestock is given now the same rates as the Missouri River, the spread is 4 cents per hundred or about 10 per cent; at Mitchell, 3½ cents or about 8 per cent; at Chamberlain, 4½ cents or about 7 per cent, with somewhat greater differences west thereof.

If our horse and mule rates are to be revised, a basis 110 per cent of the fat cattle rates would produce increases from Canton to Chamberlain, with some reductions west thereof. Horse and mule rates 115 per cent of the 17000, 9, fat cattle rates would produce advances throughout the State of South Dakota except at Rapid City.

Other details are self-explanatory.

Page 14 consists of a statement showing, for representative mileages, the rates and the earnings under the 17000, 9, edible livestock rates, and also the rates and earnings under horse rates based 100, 110, and 115 per cent of the [fol. 1042] 17000, Part 9, fat cattle rates.

The first section shows the rates on different classes of edible livestock, fat cattle, hogs, and sheep. The second section shows what the horse rates would be 100, 110, and 115 per cent of the 17000, Part 9, edible livestock rates. Next is shown what the earnings are on the edible livestock rates under 17000, 9. Next is shown what the earnings would be on horses based on the actual average loading of South Dakota lines for the years shown if made 100, 110, and 115 per cent of the 17000, 9 fat cattle rates.

Take the situation at 400 miles, for example. If the horse rates were made 100 per cent of the 17000, 9, fat cattle rates, the earnings per car would be $86.51 compared with the earnings on fat cattle of $84.36. That difference, Mr. Examiner, would just about represent the difference in the amount of the claim payments on horses versus cattle.

If the horse rates are made 110 per cent of the cattle rates, the earnings at 400 miles would be $94.69, or over $10 higher per car than the average earnings on fat cattle. If the horse rates are made 115 per cent of the 17000, 9,

fat cattle rates rates the earnings at 400 miles per car would be $99.37 compared with $84.36 on fat cattle.

One other comparison. Horse rates 115 per cent of fat cattle rates are the same as rates on single-deck hogs. The single-deck hog rates at 400 miles under 17000, 9, produce [fol. 1043] earnings per car of $73.95; whereas horse rates made 100 per cent of the 17000, 9, fat-cattle rates produce earnings of $86.51—a difference of very nearly $13 per car, indicating that rates on horses as high as the rates on single-deck hogs are not justified; the difference ought to be substantially less.

Pages 14-A and 14-B, are an analysis of the movement of a substantial number of actual shipments of horses from typical points in South Dakota to typical destinations in w. t. l. territory.

To the right-hand side you will find the earnings on the 17000, 9, fat cattle rates prescribed in 17000, 9. Under the horse section are shown what the earnings would be on horses if made 110 per cent of the 17000, 9, fat cattle rates.

To all those points in Iowa, the first section, 108 cars, the actual earnings on fat cattle are $69.75; car-mile earnings of 29 cents; average rate of 30.1. If our horse rates were made 110 per cent of those 17000, 9, actual fat cattle rates, the average rate on horses would be 33 cents, the average earnings would be $77.09, and the average earnings per car-mile would be 32 cents.

In later sections are shown actual shipments to Wisconsin, South Omaha, to Minnesota points, and to Chicago.

Other details are outlined on the bottom of the exhibit itself.

Page 14-C is largely self-explanatory with the help of [fol. 1044] the explanation on the page.

Page 15 and subsequent pages con*dier* the railroads' proposals, which I understand are class A of the newly revised w. t. l. rates, 17000, 2.

110 per cent is our maximum proposal, if the commission finds it necessary to readjust our rates as a result of these Southwestern cases.

Part 1, shows the adjustment from representative points in South Dakota to an important market, Chicago. I show first the distances, the old and the new class A rates, the present rates on horses and mules, and what those rates

would be if made 110 per cent of the 17000, 9, fat cattle rates. The last column shows the fat cattle rates themselves.

At the prior hearings the railroads proposed class A of the then existing class rates, which, from those South Dakota points to Chicago, averaged 65.8 cents. The new class rates from South Dakota to Chicago average 76.7 cents.

The present horse and mule rates from those typical points to Chicago average 50.8 cents. The railroads propose an increase from 50.8 to 76.7 cents on horses, despite the present distressed condition and the present subnormal value of horses.

Other details are believed to be self-explanatory.

We find a similar analysis to St. Louis, Sioux City, St. Paul, and South Omaha—typical of the entire territory.

Page 15-A further demonstrates the abnormal result of [fol. 1045] establishing rates on horses from a part of this northwestern territory on class A. This case, Mr. Examiner, involves, in so far as w. t. l. territory is concerned, rates from South Dakota only to the principal markets in w. t. l. territory.

As I understand it, in so far as Nebraska is concerned, the rates are involved only to the extent of the relationship of the interstate Nebraska rates to the Nebraska intrastate rates. That's all that was involved in the original Nebraska livestock case: The relationship of the rates from Nebraska to the interstate markets, Sioux City, etc., versus the intrastate rates from Nebraska origins to South Omaha, etc.

So, as far as you could go in this case would be to line up those particular Nebraska rates; whereas from South Dakota, if you fix these rates on Class A or any other basis other than the present basis, it would throw the rates entirely out of line compared with all the surrounding territory.

See what would happen under the railroads' proposals. For example, page 15-A, 46 cents at Pipestone, Minn. The rate would continue to be 46 cents to Chicago. That's down in the southwestern part of Minnesota. Right across the line, the railroads would boost the rate up to 68 cents; higher than the combination of locals; wholly out of line with the rates in any other part of the territory.

The rate from Sioux City would be 45 cents; from the

first station beyond in South Dakota, 65 cents. The rate from Bismarck, N. Dak., to Chicago, would be 63½ cents. For a shorter haul from Mobridge, just south, it would be [fol. 1046] 90 cents.

The rate from Lemmon, on the Milwaukee main line in the western part of the State, the rate would be 97 cents, whereas from Miles City, Mont., it would be 73 cents,—a direct violation of the fourth section. The rates from South Dakota would be higher than the rates from origin points several hundred miles west of South Dakota. It just gives you an idea of the absurdity of the proposal.

The rate from Edgemont, S. Dak., on the Burlington, would be $1.02 to Chicago; whereas from Sheridan, Wyo., 200 or 300 miles farther west, it would be 72 cents. For that shorter haul, an intermediate point, South Dakota, to Chicago the rate would be 30 cents higher than the rate from Sheridan.

These are the rates that the railroads are proposing, the present 17000, 2, class A rates, from those stations to Chicago; the rates are in issue from South Dakota. The railroads don't propose any change in this case in the rates from Iowa and Minnesota points. They do propose rates from South Dakota; propose to put them on Class A.

The present rate would continue from such points as Pipestone and Sioux City, whereas it would boost the South Dakota rates up to the absurd figures shown on this exhibit. The rates would violate the aggregate-of-intermediates section and violate the long-and-short-haul clause of the fourth section. Absolutely no rhyme nor reason to [fol. 1047] it. Page 15-B, please, is next. There I show the relationship of the fat cattle rates, 17000, 9, to the w. t. l. Zone I and Zone II first-class rates.

Since the carriers have brought up the matter of relationship of horse rates to class rates, I have shown, the relationship to the first-class rates of the 17000, 9, fat cattle rates, and of horse rates made 105 per cent, 110 per cent, and 115 per cent of the 17000, 9, fat cattle rates to the 17000, 2, first-class rates.

The details are self-explanatory.

Since the carriers are proposing rates on horses related to the class rates, we thought it advisable to make some showing as to what those new class rates are, there being no evidence in the previous record regarding new

class rates. Page 16 shows the division of territory in w. t. l. territory under the 17000, 2, decision.

The circumstances surrounding the movement of class rate traffic differ in a great many respects from the circumstances surrounding the movement of carload traffic, such as livestock and grain and other farm products.

In the general grain case and in the general livestock case the commission has not broken up w. t. l. territory into several sections. It has prescribed a fairly uniform basis of rates throughout the territory.

The class rates, as cited by the report in 17000, 2, apply [fol. 1048] on the higher grades of freight traffic, l. c. l. tonnage and the generally more valuable shipments of carload tonnage, such as automobiles, etc.; and the railroads have even found it necessary to cut the automobile rates under the high 17000, 2, first-class rates. But the report in that case itself will serve to distinguish the circumstances surrounding class rate traffic from livestock.

Page 17 is self-explanatory.

Pages 18, 19, and 20 serve to show the serious advances that occurred under 17000, 2, in many of our class rates. The commission permitted an advance in the class rates as a revenue measure largely in order to permit, to the extent possible, reductions in the rates on agricultural commodities. And we have here the railroads, having secured their advance in class rates, now coming back and trying to get advances in the agricultural commodities, too.

Pages 21 and 22 are self-explanatory.

So also are 23 and 24.

Page 25 gives an example of what would happen if you boosted the South Dakota horse rates without changing the rates in Iowa. You will find there the rates to Des Moines from points in Iowa and from points in South Dakota on the Milwaukee Road. You will note the rate on horses to Des Moines from Sioux City is 21 cents, jumping immediately to 40 cents from the first South Dakota station beyond.

[fol. 1049] If the carriers need revenue, let them boost some of these subnormal rates instead of piling a still additional burden on interstate traffic. That is an important element here. That situation exists not only on horses but exists on all those other commodities. It is typical of the general adjustment.

Pages 26 and 27 show that a similar situation would exist in connection with the interstate rates, South Dakota to Minnesota, versus the Minnesota intrastate rates. The horse rate to South St. Paul from Ortonville, Minn., is 25 cents, $57 per car; whereas from Milbank, S. Dak., just beyond, it is 7 cents higher, 32 cents.

Pages 28, 29, 30 and 31 deal with the trucking situation and are self-explanatory. The trucking situation has been considered by the commission. The railroads have lost most of the edible livestock tonnage from that territory.

Sioux City is the most important market for South Dakota livestock. The details are shown on page 28 of the rail movements versus the truck movements to that market. In an average year Sioux City gets perhaps 65 to 70 per cent of all edible livestock shipped out of South Dakota.

Cattle in 1931, and that's Part 2 of that exhibit. The rail receipts, were 115,653 head; whereas the truck receipts were 165,000, etc. Take your hog movement: The total receipts by rail at Sioux City from all sources were 247,902; [fol. 1050] whereas the movement by truck into Sioux City was over 1 million head—four times more than the movement by rail.

There was also a very important movement of South Dakota hogs and Minnesota hogs and Nebraska hogs to the other markets—South St. Paul, South Omaha, Kansas City, etc. When I say "most," I mean more than 50 per cent.

Chicago is the biggest market. I am talking about South Dakota, and Sioux City is the important market for South Dakota hogs.

During the period 1920 to 1929, an average of 1.28 per cent of the cattle received on the Chicago market moved in by truck. In 1930 that percentage had increased to 5.77 per cent—an increase in the truck movement of pretty nearly four times in that period.

On calves the increase was greater.

On hogs the trucking movement into Chicago had increased in 1930 over the 1920-1929, period nearly four times. In so far as South Dakota is concerned, unquestionably more than half of the traffic of livestock has been lost to the railroads. I think that from Nebraska and Kansas also the large proportion now moves by truck. More than half of the movements to the primary markets is by truck.

The commission has given consideration to the element of truck competition in all these major cases.

Referring to Mr. Christianson's suggestions that we compare our rates in central and official territory, we have done [fol. 1051] it. We have made comparisons, and horse rates, or a good many of them, are second class. And in a recent report of an examiner it has been suggested they be cut to fourth; the Galesburg Case, 24486, Examiner Trezise.

In addition to that, I have, since the prior hearing, made an investigation of the comparative conditions in w. t. l. territory versus official and southern territories, and find that in point of volume of production, volume of movement by rail, value, and in other respects there is a very limited similarity.

The commission, in the Dimmitt-Caudle-Smith Case, 47 I. C. C. 311, cites the light and sporadic character of the movement of the livestock in official territory. This is particularly true of horses. Our exhibit in the prior case contained a study of actual movement by rail. During that year, South Dakota, for example, with 4,279 miles of road, originated 1,107 of horses and mules; while the volume of movement of cars originated in typical eastern States was as follows:

Maine, 65 cars. Michigan, with 8,925 miles of road, originated 184 cars. New York, with 8,434 miles of road—and that was the mileage of road during the period those shipments moved—originated 571 cars. Pennsylvania, with 11,680 miles of road, originated 581 cars. Vermont, 11 cars. West Virginia, 3 cars. They are cars originated by rail in those States.

The average value of the horses produced and shipped [fol. 1052] in those eastern States greatly exceeds the average value of our western range and farm horses.

Furthermore, the commission considered, in the prior horse and mule cases, similar comparisons with official territory and was not governed by them. They did that in the South Dakota horse case, where the railroads made the same comparisons.

So also with the situation in the southern States. The production and rail movement may be illustrated by a statement of the actual carload shipments originated during a recent year, covered by the study in the prior case:

In Florida, the total carload movement was 15 cars, shipped by rail, with 5,249 miles of road in that State. Louisiana, with 5,363 miles of road, originated 207 cars. Mississippi, with 4, 447 miles of road, originated 30. North

Carolina, with 5,492 miles of road, originated 46. South Carolina, with 3,697 miles of road, originated 5. In 1918, a study was made by the director general and the figures given was the actual movements of horses and edible livestock from the various states.

I have also, in connection with this and in other cases, made various comparisons between the rates on many commodities applying in w. t. l. territory versus other rate territories, including particularly the southern and official territories. In many instances, the w. t. l. rates are higher than those in the other rate districts. In many instances, the [fol. 1053] rates are quite similar in level; while in still other instances the w. t. l. rates are lower than those in the other territories.

I can, if desired, develop the situation in detail, as I have many of those studies here but not in exhibit form. The fact is that the carriers and the commission haven't adjusted rates on the same commodities on the same relative level in the different territories. The burden of transportation charges is applied differently in the different rate territories. There's no use of having low rates on cotton, for example, in w. t. l. territory. They have low rates in the South. Our rates up here on any movements that occur are greatly higher than the southern.

Pages 34, 35, 36, 37, 38, 39, 40 and 41 are studies of rate adjustments on other commodities and are offered for the purpose of affording a basis for comparison between the rates and earnings on present horses' and the railroads' proposed horses' and our proposed horses. The details are self-explanatory.

Page 42 is largely self-explanatory. It is a statement of distance scales established by the commission on other commodities, many of them livestock and livestock products, that are no- related to the class rates.

The railroads have taken the position in a number of these cases that rates on livestock, rates on this, and rates on that ought to be related to the class rates. The commission has considered those conditions in many of these other cases and has not adjusted the rates on those commodities, [fol. 1054] particularly specific farm commodities and livestock, bearing any relation to the class rates.

The details are self-explanatory.

Page 43 is also self-explanatory, as is also 44, 45, 46, 47, 48, 49, 50, 51 and 52. The matter is taken from official

sources and different reports, and the sheets clearly show what they cover. Most of them—at least, several of them—are continuations of exhibits offered in the prior case brought down to date.

Cross-examination.

By Mr. Gault:

The principal market for South Dakota horses and mules is Chicago, Illinois. St. Louis appears to be a pretty important market, although there were no particular shipments to St. Louis during the period covered by these studies.

There is a considerable movement east of the Indiana-Illinois State Line. And, regarding those rates, the rates in official territory that are considerably higher than the w. t. l. rates are under attack right now. On the movement to that territory we pay generally a combination over Chicago or the Mississippi River. The eastern factor in some cases is second class, and people have been in the office complaining about it and wanting us to take it up with the commission.

There is quite a variation between different classes of horses but on most of the horses shipped out of our ter- [fol. 1055] ritory the prices are very very low. There are variations, but they are all low. Mr. Christianson talked about $750 for saddle horses; it is the training the horse has got that puts the value on it.

There is very little shipment of unbroken horses. Farmers in Iowa and Illinois don't want to handle unbroken horses. The horses ordinarily are broken before they are shipped.

There is a very little competition between South Dakota horses and Southwestern horses. The movement from the Southwest is largely mules. There is not a great deal of competition between horses and mules. If you are moving horses to central territory, the adjustment from South Dakota is largely combinations over Chicago and other gateways. I don't know just what the adjustment is from the Southwest into central territory. I did not consider it in issue.

The value of horses in South Dakota is greater than in Oklahoma and Texas. The principal production in Oklahoma and Texas is mules.

The studies on page 8 of Exhibit C-288 are contained in the publications of the U. S. D. A. They are published figures. The primary study was made by the department of agriculture. Certain calculations were made apparently by someone else. I will find out if the figures contained on pages 9, 10, 11 and 12 are from official publications or where the information was received. Page 13 is a standard ex-
[fol. 1056] hibit we have used in the score of exhibits and has never been challenged.

Exhibit C-289, I show all the published rates on edible livestock from all points on Milwaukee in South Dakota to Chicago. The showing to Chicago is typical of the situation in Illinois and Wisconsin. It is typical of the adjustment to the market receiving the largest volume of horses and mules.

On page 15 are shown the class A rates that you are proposing to apply. There are some rather substantial increases in the rates indicated on that page but it is the fact that there were a lot of class rates reduced on December 3rd. If you want that look in Part 2. There has been no effort made to just merely show the situations where there were advances. Rapid City is typical of the western South Dakota situation. There were quite general reductions in the territory west of the Missouri River, and a lot of advances west of the river. The general adjustment east of the river, most important part of it, was generally advances. The big bulk of the movement of horses covered by this study moved from stations east of the river, in fact the only movement from west of the river being to South Omaha and Fremont. There has been an increasing production of livestock in South Dakota. My statement was that the trucks were receiving more than half, more than the majority of the livestock produced in the State of South Dakota and the figures show it.

Page 29 of Exhibit C-289 does not show any drive-ins for horses; that is because this study was prepared especially for the general livestock case now pending. The situation for a typical market, Sioux City, is shown on page 28. As I recall it, the study of the U. S. D. A. related to edible live-
[fol. 1057] stock only, and the point I was going to make is that what has happened to edible livestock will unquestionably happen if you boost these horse and mule rates the way you are suggesting. That's just an example of what has happened on that class of livestock.

I have not heard of any movement of horses and mules from South Dakota to Atlanta, Georgia. Our principal movement from South Dakota is either to w. t. l. destinations, as represented by pages 14-A and 14-B, or official territory.

In referring to the matter of Reconstruction Finance Corporation extending loans to railroads in dire necessity, it is expected that the money will be repaid to the Government. That's something that our poor farmers out there can't get. They can't get credit from the government to carry on their operations. If you will read that 1932 outlook for South Dakota, you will find out what the facts about farm credit are. The railroads haven't been forced into this situation. They have used poor judgment, like a lot of the rest of us. We have found rate reductions create additional revenue. It's not a question of getting rate increases; it's a question of getting some more business at rates that will permit you to hold your own with the trucks. If these rates are boosted the railroads will find they are probably getting less money from horses and mules than they are getting at the present time.

Q. If the rates are reduced so that they are insufficient to pay the cost of operating the road, how will the railroads then be able to make a profit.

A. Well, under the present conditions let's don't talk about profit. It's just a matter of keeping our head above [fol. 1058] water. We are not asking for reductions. We are asking to have our rates left alone until an investigation is made of the w. t. l. rates sufficiently extensive so as to permit a reasonable level to be established for the whole territory and not boost rates from South Dakota up in the air and leave the Iowa, Minnesota, North Dakota, and Wyoming, and Montana rates as they are. As to the situation of tax payers being relieved of the burden of paying subsidies to competing forms of transportation, and get-[fol. 1059] ting their taxes reduced, nobody has support of the railroads on that proposition more than the South Dakota Board of Railroad Commissioners. We don't like to see these vast expenditures in inland waterways. We think there ought to be control of trucks and other transportation agencies. No State commission has gone farther on that situation than the South Dakota commission. And we find some of the railroad-owned companies, the Wilson

Transportation Company out there, opposing the board in its efforts to secure adequate control of our trucks. There ought to be control of all of the competing forms of transportation.

In Exhibit C-288 on page 1, values of various kinds of edible livestock and of horses and mules are shown. The values of horses and mules are shown per head, but beef cattle and veal calves and sheep and lambs are shown per 100 pounds; that is the usual method. This is because horses are sold by the head, edible livestock is bought and sold by the hundred pounds.

That's the regular market practice. A horse is worth just so much whether he weighs 1,100 pounds or 1,200 pounds. A beef animal is worth as much as he weighs. Horses are sold for utilitarian purposes. Of course a lot of horses are sold for food production but the commercial horse is sold as a work animal. Wherever edible livestock is sold it is for its food value.

There is some limited movement of South Dakota horses to St. Louis. My information was that the bulk of our horses go into western trunk line destinations indicated by pages 14-A and 14-B and some movement went to the east. Whether there is any movement into the southeast or the [fol. 1060] southwest or south I don't know about it; quite possibly there is some such movement.

The comparison of shipments of mules with shipment of horses is to be found in Exhibit C-288, page A-1, stating number of head of horses, thousands, and also number of head of mules, thousands.

You will note that the volume of the production of mules and mule colts is about one thirtieth of the volume of the production of horses and colts. I would say generally that the shipments would be in about the same proportion as the production.

The rates on horses and mules from Minnesota and North Dakota, from Iowa, from Wisconsin, from Illinois, the interstate rates from Nebraska, the rates from Montana, the rates from Wyoming, and the rates from much of Colorado are not involved in these cases. They are not involved at all. There are no complaints regarding them; there is no issue of alleged undue prejudice against them. The rates are not involved, and, therefore, I have shown present rates. Those are the present rates from all of those States.

From South Dakota, however, the rates are involved. I don't know the reason why. But from South Dakota to interstate markets the railroads are proposing class A, and I show what the class A rates would be from South Dakota compared with the present rates from the adjacent territory which are not involved in this case.

This is primarily a southwestern case. One of the complaints alleged undue preference of Nebraska. Then the commission apparently of its own volition assumed that [fol. 1061] since the South Dakota and the Nebraska edible livestock rates were somewhat related, that they ought to drag the South Dakota horse and mule rates into this case because the Nebraska rates were involved. That's the only explanation that I know of.

The original order in the case assigned the 12268 case, in so far as it involved rates on horses and mules, for further hearing with the southwestern cases.

I am sure you will find that that is the correct explanation. I am sure the railroads will concur. We shouldn't be in here and I am sorry we had to take up so much time, but the horse and mule rate adjustment would be in a chaotic condition if our rates were fixed up on any such basis as the railroads suggest and the other rates left down. I hope the commission can leave our rates out until they are before the commission in an adequate proceeding.

(Exhibits C-288-289-290, witness Kelley, were received in evidence.)

J. H. Tedrow, called as a witness and, being duly sworn, testified as follows:

Direct examination (pro se):

I am transportation commissioner, Chamber of Commerce, Kansas City, Missouri, and previously have been a witness in this case.

These cases originally started in isolated or separated proceedings, one of which was brought by us, Docket 13001, which involved the rates to Texas, to which territory the [fol. 1062] rates on horses and mules from Kansas City were on class A basis. Nowhere else in the territory had we such a basis as that. We had commodity rates to Arkansas. Then a case was started by some people in Texas,

represented by Mr. Pelton, which resulted in involving this whole western territory here, Kansas, Nebraska and South Dakota.

The only interest that the complainants in Docket 13001 have in this proceeding is to be left alone. That is to say, this general stirring up of the rates on horses in this territory is not of our seeking.

The situation at the present time is that in this proceeding rates to some markets are involved and to other markets are not. The rates from Nebraska to Kansas City are involved, and the rates from Nebraska to Chicago are not involved. That is all discussed in our briefs, but I want to call attention to the fact that the people or the interests that have been responsible in opening this whole proceeding and spreading it before the commission are not represented at this further hearing.

I have prepared an exhibit which has been identified as Exhibit C-291, consisting of 9 pages, and which brings down to dated economic data previously submitted by me in this case in Exhibit C-175.

Taking page 1 of this exhibit, this is page 1 of Exhibit C-175, brought down to date. The data added there is from [fol. 1063] the year 1927 on. It shows the receipts of horses and mules at the principal livestock markets.

I want to call attention to the tremendous falling off in receipts in the year 1931. Comparing the totals, then, beginning in 1900 down to date, it shows the horses now handled on these markets are less than one-third of the heaviest years and, going back to a period before the War, less than one-half.

This includes everything, drive-ins, as well as horses handled by rail.

Page 2 of this exhibit brings down to date the table appearing on the left-hand side of page 4 of Exhibit C-175. The figures added there are for the years 1929, 1930, and 1931.

The farm price per head of horses and mules is shown. Note that in 1931, on horses, it was $61.36, and compare that with the average of $106 plus and $102 plus per head for the period 1909 to 1913 and for the period 1914 to 1920, respectively.

The same comparison generally goes as to mules.

Page 3 of this exhibit brings down to date the table ap-

pearing on the right-hand side of page 4 of Exhibit C-175. It shows the farm price of horses and mules by age groups. Note that to get figures equal to the 1931 values, you would have to go back to 1902. The years 1929, 1930, and 1931 are the ones that are added to this exhibit.

Page 4 of this exhibit brings down to date table shown on the right-hand side of page 7 of exhibit C-175. The years 1928 on are added. This is the average farm price [fol. 1064] per head of horses and mules the 15th of the month for the years 1910 to 1931, inclusive. I don't think it needs any discussion.

Pages 5 and 6 of this exhibit bring down to date the table shown at the right-hand side of page 7 of Exhibit C-175. It is the average monthly farm price per head on mules and mule colts for the 15th of the month by States, and the years 1929 on have been added. I wish to call attention to the low prices in Kansas and in the Dakotas.

Page 7 of this exhibit brings down to date the table shown on the right-hand side of page 9 of my previous exhibit, the years 1928 on having been added. The Kansas City receipts in 1931 were 33,218 head; much less than for the years 1928, 1929, and 1930, although somewhat greater than for 1926.

A chunk is a horse which is smaller than a draft horse. The draft horses, as you know, are the big horses. The chunks are all-around horses, used in drays, used for general work, as differentiated from the great, big Clyesdales and Belgian horses.

The bottom of this exhibit shows the prices brought down to and including 1931, and shows the falling off of values.

Pages 8 and 9 of this exhibit bring page 10 of Exhibit C-175 down to date. Page 8 includes the years 1912 to 1921, and the second page, 1922 to 1931. And the years 1928 on have been added. It shows the receipts at Kansas City as divided between the various States of origin.

Exhibit C-292 is a statement of the values of horses and mules as paid producers, from a publication of the United States Department of Agriculture, on March 15, beginning 1925 down to March 15 this year, and also the values for the [fol. 1065] entire month of April, 1931, and 1932, showing the shrinkage in values of horses and mules.

Exhibit C-293 is a 1-page exhibit and shows the receipts at the Kansas City market of horses and mules together for the first 4 months of the year for the years 1927 to 1932,

inclusive; and shows that while 1927 receipts were low, the receipts grew for 1928, 1929, and 1930, and then have fallen off again. The shipments are also shown, and naturally the figures almost equal the figures for the receipts.

(Exhibits C-291, C-292, C-293, witness Tedrow, were received in evidence.)

Cross-examination.

By Mr. Gault:

I think that there is a revival of demand for horses and mules at the present time, but that movement has been deterred on account of the depression. There has been no tendency for an increasing demand nor toward an increasing price at the present time; there may be a trend that way, but I don't think it is pronounced on account of the depression. There is a tendency that way, yes, to use more horses, I believe. I have heard some things to the effect that there is a tendency to substitute horse and mule power for tractor and motor power at the present time. I do not know it to my own personal knowledge.

The prices on Exhibit C-291, page 7 are average prices: I mean it is a range of prices. Kansas City is a pretty representative horse and mule market. It is located in western territory rather than in southern or eastern territory. It is located right between them all. What is taken out of the Government Year Book are farm prices, all over the territory, all over the United States, and we have it worked out by states, too.

[fol. 1065a] I am not submitting these values here, these market values, with the idea that either the lowest or the highest price shown should be taken as basing a rate on. I submit this page here to show the trend of prices, to being the economic data down to date.

I think the prices of mules right now are pretty near as low as $68.60 per head. Some exceptional mules on the Kansas City market may bring up to $200 here. That is not the class of mules that generally reaches the market. All kinds of mules reach the Kansas City market.

Page 6 of my Exhibit C-291 shows the different kinds of animals that they have in those states, and this explains the peculiarity of the price ranges for Texas, New Mexico, Nevada and California. The grade of animals in Texas

will be much higher grade than those in New Mexico. There are a lot of range horses and burros in New Mexico. And horses in Texas are used for farming purposes, horses and [fol. 1066] mules, bringing up the average; high-grade animals. As to the difference of $37 in New Mexico and $66 in Arizona, there is a difference in the animals in Arizona as compared with New Mexico, a better grade of animals there. The use to which the animal is put may make an animal, although of the same quality, worth more in one locality than another.

HENRY CHRISTIANSON, called as a witness, and being duly sworn, testified as follows:

Direct examination.

By Mr. Gault:

(Railroad witness put on at this time by agreement.)

I am employed by the Chicago, Burlington & Quincy Railroad as commerce assistant in the traffic department.

I submitted at the previous hearing in this case at Kansas City Exhibit No. 280. In the exhibit I now submit, No. C-294, I have brought down to date certain pages from Exhibit 280, Exhibit 280 consisting of 22 pages.

At page 1 of Exhibit C-294 is a statement showing cars and tons of livestock handled by the Chicago, Burlington & Quincy Railroad during the past 9 years. The exhibit submitted in the previous case ended with the year 1927. The years 1928 to 1931, inclusive, have been added.

The second sheet is a statement showing yearly average prices for horses of various classes at the Chicago stockyards during the years 1923 to 1930, inclusive. At the time [fol. 1067] this exhibit was prepared, we did not have the 1931 figures. I understand they are available and will probably be presented by a later witness.

We had testimony this morning from witness Kelley to the effect that there had been shipments from South Dakota of horses, and he cited as a typical instance a car containing 23 horses, which he estimated at a high value of $828. Mr. Kelley gave us the account sales for said car and expressed the opinion that that was above rather than below the average.

Had those horses been sold on the Chicago market merely as farm chunks, they would have brought $85 a piece of $1,855. That's $1,027 more than Mr. Kelley says was the farm value.

The rate we are proposing from South Dakota, a point well west of that from which he says the horses would move, would yield something less than $200 per car. In other words, the service of transporting these cars from a point well west of the middle of the State of South Dakota to Chicago increases the value, if they are sold as farm chunks, $1,027 per car above the farm price; and our transportation charge for that service is considerably less than $200 at the rates we propose to establish.

On the other hand, had they been sold as draft horses, those same 23 horses would have sold for $3,375, or an increase in value of $2,507 above what Mr. Kelley says was the farm price in South Dakota. And, as stated, under the rates proposed, the freight charge would be something less than $200 a car. In other words, the transportation service [fol. 1068] adds 1,200 per cent of the amount of the freight rate we propose to charge. If those horses had been sold as saddle horses they would have brought $750 a head but I have not gone that far; polo ponies would fetch more. You will notice I picked out the cheapest price of all.

Mr. Kelley laid a great deal of emphasis upon the fact that the farm prices of horses in South Dakota are lower than ma-y adjacent States. Now, the railroads are not concerned with these horses that are born and grow up and die on the farm. They are concerned with the horses they transport. And if the farm value of horses is less in South Dakota than in other States, certainly the value of the service in transporting them to market is far greater in the case of South Dakota horses than in the case of horses from other States which have a greater farm value.

Sheet 3 of my exhibit is a statement showing C. B. & Q. and Q. O. & K. C. loss and damage claim payments on carload business during the fiscal year ending June 30, 1931, divided as between commodity groupings and showing revenue, claim payments, and per cent of claim payments to revenue.

It will be noted that the claim payments of the Burlington on horses and mules are outstandingly higher than on any

other class of traffic the Burlington handles, being 9.68 per cent of the revenue on horses and mules, as against 1.13 per cent on cattle and calves, and 1.46 per cent on hogs.

Sheets 4 and 5 are a statement showing the annual livestock receipts at the Union Stock Yards, Chicago, and the shipments from Chicago by years from the year 1865 down to and including the year 1931. This brings down to date [fol. 1069] certain data shown in the exhibit I presented at the preceding hearing.

Sheets 6 and 7 are statements showing the average loading of carload freight by commodities on the C. B. & Q. Railroad for the fiscal year ended June 30, 1910, and the calendar years 1915, 1920, 1923, 1927, 1930 and 1931.

The purpose of this exhibit is to show that the average loading of horses, in common with the average loading of livestock generally, has remained stationary over the past 20 years, while the average loading of other commodities has generally substantially increased, the increase on all traffic, for instance, being from 24 tons in 1910 to 30 tons in 1931.

Page 8 is a statement showing the actual short-line and average mileage between Chicago, Ill., and Missouri River points.

Pages 9 and 10 are a statement showing the present and proposed rates on horses, carloads, from the Missouri River crossings to Chicago; also from representative points on the C. B. & Q. Chicago, Omaha and Denver, Colo.

(Exhibit C-294, Witness Christianson, was duly received in evidence.)

Cross-examination.

By Mr. Kelley:

In connection with page marked 383-A, these are the five groups of commodities into which the commission classifies the traffic handled by the railroads, and the livestock has been itemized to show how the claims on horses and mules compare with the claims on other livestock.

[fol. 1070] And the details are shown for livestock as compared with the other four classes into which the commission has divided the traffic. One of the elements to be taken into consideration with reference to horses and mules

taking higher rates than other classes of livestock is the percentage of loss and damage claims paid to revenue. The rates on horses and mules should be Class A. I don't know how much higher that would be than the rates that apply on other livestock.

It is our idea that the rates on horses and mules should be made with no regard to the rates on food animals—animals having value merely for consumption. These are animals having value for tractive effort and compete, you might say, with automobiles rather than with hogs. Certain decrepit horses that can't be used for anything else, when they have served their useful purpose as horses, are sometimes sent to canning plants for slaughter.

The Interstate Commerce Commission, on horses of that character going to Brooklyn, N. Y., horses that were suitable only to be killed and canned, found fourth class to be proper, and fourth class is a considerably higher rate than Class A which we are advocating on commercial horses and mules.

We would take into consideration the heavier claim payments, the greater hazard in transportation of horses than of edible livestock, and consider that along with other elements in making the rate. There are some elements of similarity between horse and mule traffic and other livestock traffic.

[fol. 1071] In that the animals must be stopped to be fed and watered in transit if the movement takes over 36 hours, and that we often have to have caretakers with them, in that respect they are similar to livestock. I don't recall any where the commodity moves in the same sort of equipment and any commodity that requires the amount of service that livestock generally requires—special services and things of that sort. We have no other traffic than the livestock that even approaches horses in the amount of special service and investment requird to transport it. Horse and mule traffic is very similar to the livestock traffic generally; it is expensive to handle just as other livestock traffic is. This difference in percentage of damage claims to revenue is one of many differences.

Another point of difference in the horse and mule traffic is the volume of traffic handled; what the traffic will bear is another difference. For instance, if the transportation

service adds 1,000 per cent or 1,200 per cent of the farm value of a commodity, we think class A is a low charge for the increase in value that the commodity receives by reason of the transportation service. The ability of traffic to bear a certain rate is an element, an important element, to be taken into consideration. This livestock, I might say, comes into competition more or less with other edible products of the farm. The horses don't do that until their useful purpose otherwise has been served, until they are ready, you might say, to be killed off. Then they are sometimes used for the same purpose as hogs and cattle. Another element is the fact that edible livestock, such as hogs, and sheep, and goats, so far as their use is concerned, are competitive in a sense with other farm products and not with other means of transportation or haulage of commodity. Edible livestock would be more competitive with other farm products than with horses and mules.

[fol. 1072] When you take all commodities into consideration as a whole, other commodities increased in loading much more than did livestock, the average having been 24 tons in 1910 as against 30 tons in 1931. That was largely brought about by the increase in size and carrying capacity of the equipment. Whenever the C. B. & Q. is about to build or purchase a supply of stock car equipment, or other equipment, as a matter of fact, it makes inquiry of its shippers to ascertain what kind of equipment they want.

We have made that request repeatedly in the case of livestock, and they have told us every time they want 36-foot cars. If there were any demand for larger livestock equipment from any considerable portion of our livestock shippers, it would be built and furnished. We have no livestock cars longer than 36 feet 6 inches for the reason that our shippers don't want them. For instance, in the coal business, we ask what sort of coal cars they want; whether they want gondola cars or flat-bottom cars or cars that open up in the bottom, just exactly what kind of equipment they want, and we go as far as we can to furnish that sort of equipment.

Box car, coal car and all other equipment has increased much more in size and carrying capacity, 1931 as compared with 1910 than livestock cars for the reason that there is no demand for la.., or livestock cars.

It is our purpose, if the commission approves Class A

[fol. 1073] here, to make class A generally applicable throughout the territory.

The present rates from Nebraska to Omaha on horses and mules are 15 per cent greater than the cattle rates.

I think the record should be made clear on that point. Horses and mules were not in the 17000, Part 9, so that wherever 17000, Part 9, rates become effective on livestock there is now no fixed relationship between the horse rates and the livestock rates.

I said the volume of horse movement as compared with the volume of livestock movement generally was one of the reasons why there should be no relationship whatever between horse rates and livestock rates, for the reason that the movement of horses and mules is so insignificant in comparison with the movement of meat animals. Another element that is entitled to consideration is the value of the service rendered in the transportation of horses and mules. The same theory should be given consideration in making rates on other agricultural products. It is my position that there should be no relationship whatever between the rates on horses and mules and the rates on meat animals for the reasons I have given in answer to several questions here.

Redirect examination.

By Mr. Thompson:

If rates are made inordinately low because of particular conditions incident to the edible livestock rates, I would not consider that rates made under such conditions would form [fol. 1074] a proper criterion for basing rates on traffic that is not subject to those conditions.

The conditions under which live poultry move are a good deal similar to the conditions under which edible livestock moves. They move in special equipment. They require caretakers. We furnish transportation to the caretakers and when the commodity gets to the market it is sold in strict competition with the product of meat animals. There is no such condition in the case of horses except until after the horses have served their useful purpose. The rates on live poultry are substantially higher than the rates on edible livestock, and they have been fixed by the commission on that basis.

My recollection is the commission has prescribed 65 per

cent on poultry from western trunk line territory, but the commission in its decision in which it prescribes the 65 per cent says 65 per cent was without prejudice to what may finally be decided in the National Poultry, Butter and Egg case. The rates on dairy products, such as butter, eggs and cheese are substantially higher than on edible livestock. They are in competition with meat animals.

I have one statement I overlooked making that I would like to make now. I testified some 6 months or so ago in a hearing at Atlanta, Ga., involving rates on mules from the western territory to Atlanta; and, in preparation for that hearing, I had occasion to make a study of the movement of horses from stations on the Burlington to destinations [fol. 1075] east of the Illinois-Indiana State line.

I don't have the details of that statement with me, but I have read my testimony in the Atlanta case, and the figures showed that the C. B. & Q. Railroad, during the period July 1, 1929, to November 30, 1931, had 697 cars of horses to destinations east of the Indiana-Illinois State line. Some of those horses moved from as far west as Montana and Wyoming to destinations as far east as Maine, Massachusetts, and other of the New England States.

For all that portion of the haul east of the Mississippi River or Chicago, they paid second-class rates, which are 85 per cent of first. The rates we are proposing are 45 per cent of first.

Recross-examination.

By Mr. Ross:

I would say that the rates on horses and mules should be made with no regard to the rates on live poultry, because they are not competitive in the sense that live poultry, for instance, and livestock may be competitive. The horses which have become useless on the farm are used for canned horses, the intention being that they shall be used mainly as animal food.

Caretakers accompany shipments of horses and mules and cattle and calves, hogs, and so forth. That is one of the respect- in which the service on all livestock is exceptionally expensive. The carriers in the western trunk line territory, some of them, have provided for the return [fol. 1076] transportation of caretakers up to 200 miles on

cattle, calves, hogs and sheep and have not on horses, because of trucking competition. They haven't felt that trucking competition in the case of horses as they have on edible livestock. In that respect, the edible livestock is receiving rates very much less than anything the Interstate commission could prescribe. It is merely an adjustment the carriers have seen fit to establish, with a view to retaining the short-haul edible livestock to the rail lines. We have, as I have said, found no necessity for doing anything similar in the case of horses.

It is my opinion the rates on livestock are too low.

In so far as rate levels are concerned, in the decision in 17000, part 9, on the western livestock rates, it resulted in a good many increases, but the commission said in its report that it doubts very much whether even the increases it grants will do much more than pay the cost of the service. The intention as I understand it, was to make these livestock rates more nearly compensatory. The commission itself expressed doubt whether it had increased the livestock rates sufficiently to make them generally compensatory.

We have found some people who want to reduce rates for short hauls and we, in self-defense had to follow suit. The trouble is that it is cut throat competition.

The figures I read from the case, into this record, which was held at Atlanta, the case involved rates on mules to Atlanta from western trunk line and southwestern ter-
[fol. 1077] ritory.

We undertook to show that the movement of horses and mules from the territory served by the Burlington into official classification territory was something like 20 times the volume of the movement from the territory served by the Burlington into the Southeast; and that as to the portion of the haul east of the Mississippi River or Chicago, that traffic moved on second-class rates 85 per cent of first, as far east as Massachusetts, Maine, and other New England States. The movement into Southeastern territory is on commodity rates and the movement to Atlanta from Nebraska is on a commodity rate; it is on a combination of rates made over St. Louis or the Ohio River. I don't know how they compare with Class A.

It is my opinion that the livestock rates do not contribute their proper share to the transportation revenues of the

carrier and that is my definition of a sub-normal rate. I would say our class rates are what might be called the normal level, and commodities moving on class rates, I should say, might be said to contribute their proper share. The class rate adjustment might be considered the normal adjustment. I would say this, that as the beginning of the rates structure the class rate adjustment is the adjustment. While a given rate adjustment is in effect, and until it has been shown to be improper, we have got to assume that that is a normal adjustment. And then whether anything shall be made lower than the class-rate adjustment would have to depend on peculiarities incident to the traffic.

[fol. 1078] Whatever the commission prescribes from South Dakota to Chicago, for example, in this case, Class D or Class C we are willing to prescribe in the adjoining territory. It is probably true that if the rates prescribed by the Commission give us a chance to boost our rates we are going to do that; but if it gives us something lower than we have, that would probably be another matter.

C. A. Ross, called as a witness and, being duly sworn, testified as follows:

Direct examination (pro se):

I am rate expert for the Nebraska State Railway Commission, and have been connected with the commission for nineteen years. Exhibit C. 295, page 1 is a map of the State of Nebraska, upon which I have shown the location of the various points used in the pages following in connection with the rate studies shown therein.

Page 2 is a statement showing the number and value of horses in Nebraska by counties for the years 1927 to 1931, inclusive; and at the bottom of the page 1 have shown the percentage relationship of the various years to the year 1927. Under the column headed "1913," it will be noted that the number on forms in 1931 was but 77.7 per cent of the 1927 figure, and that the value was but 72.43 per cent.

On page 3 is shown similar information for mules in Nebraska, and it will be noted that the number of mules on farms in 1931 was but 69.08 per cent of the 1927 figures, and the value is represented by 93.99 per cent.

[fol. 1079] Page 4 is a statement showing the number of horses and mules on farms in Nebraska, together with the value, the number per mile of line, and the value per mile of line.

Pages 5 and 6 are a statement showing the number of head of the various kinds of livestock on farms in the States indicated the number of head per mile of road, and the rank of each State. It will be noted on page 5 that Nebraska is shown as ranking third in the production of livestock; and Iowa, on page 6, ranks first. Texas, on the same page, ranks second.

Page 7 is a "recap" of the preceding page.

Page 8 is a statement showing the number and value of livestock in Nebraska for the years 1927 to 1931, inclusive. It will be noted that in 1931 the value of livestock was but 92.96 per cent of that of 1927.

On page 9 is a statement showing the distance, a comparison of rates and charges on horses and mules with the rates and charges on cattle, from points in Nebraska to South Omaha. The stations referred to on the left-hand side of the page are those that are indicated on page 1 of the exhibit.

I have shown the distance, then the horse and mule rate in cents per hundred weight, the revenue per car of 23,000 pounds, the cattle rate in cents per hundredweight, and the revenue per car based on 22,000 pounds, and then the percentage relationship of the revenue on cattle to that of horses under both the 23,000 pound weight and under a weight of 21,600 for horses, which is the weight applicable [fol. 1080] on a car 30 feet and 6 inches. Now, the standard car, 36 foot 6, for horses takes a minimum weight of 23,000 pounds.

I think the figures on this page are self-explanatory and need no further comment.

It used to be that the horse rates were named in dollars per car and applied on a car 30 feet 6 inches, but now they are moved in a 36-foot-6 car, and the minimum weight really is 23,000 pounds.

On page 10 is a statement showing comparison of rates and charges on horses and mules compared with the cattle rates from the points shown to South Omaha, the cattle rates being those that would go into effect January 25 on interstate traffic, the horse and mule rates being the pres-

ent rates; and the minimum weights are as described in connection with the preceding pages.

Under the column headed "Cattle Revenue Per Car," that should be "22,000" pounds instead of "23,000" pounds; about the middle part of the page.

I think the figures are self-explanatory. They are simply mathematical computations.

Page 11 is a statement showing the revenues per car, per car-mile, and per ton-mile on horses and mules in cars 30 feet 6 inches compared with the revenue on cattle moving in cars with a minimum weight of 23,000 pounds, figured on the present rates to South Omaha, Nebr. It will be noted that the revenue per car-mile and the revenue per [fol. 1081] ton-mile is considerably higher than that shown for cattle.

Now, the rates in connection with this page are the rates prescribed by the Interstate Commerce Commission and the Nebraska commission in Docket 13273. In that case the rates on horses and mules were made 115 per cent of the cattle rate; and those rates applied from Nebraska, for instance, to Sioux City, Omaha, St. Joe, Kansas City, and the other Missouri River markets.

On page 12 is a similar comparison except I have used the minimum weight that would obtain on horses and mules in cars 36 feet 6 inches or a minimum weight of 23,000 pounds.

Page 13 is a statement showing distance, comparison of rates and charges on horses and mules with rates and charges on cattle from the same Nebraska points to Kansas City; and I have also shown the percentage relationship between the per-car revenue on horses and the per-car revenue on cattle.

It will be noted that, generally speaking, the per-car revenue ranges from 110 per cent to 123 per cent of the revenue on cattle. And in this connection, the heading under "Cattle Revenue Per Car" in the central portion of the page should read 22,000 pounds instead of 2,200 pounds. And the same is true of the caption under "Horse Revenue Per Car;" 23,000 instead of 2,300.

On page 14 is a similar comparison showing the rates [fol. 1082] on horses and mules compared with the rates on cattle effective January 25, which is the effective date of the decision in I. C. C. Docket 17000, Part 9.

I have also shown there a comparison of the revenue on a car of horses with the revenue on a car of cattle. And here again it will have to be noted that the cattle revenue per car caption should read "22,000" instead of "23,000" pounds.

Page 15 is a similar comparison showing the revenuer per car, per car-mile and per ton-mile on horses and mules in 30-foot 6-inch cars compared with cattle in the 22,000 minimum pound car from Nebraska to Kansas City.

The rates used here are those in effect on horses and mules at the present time and the rates that were in effect on cattle on January 24, 1931, which rates are somewhat lower than the rates now in effect. And again it should be noted that the revenue per car-mile and the revenue per ton-mile is substantially higher on horses and mules than on cattle.

Page 16 shows similar information except I have used the minimum weight of 23,000 pounds on horses in the standard car.

Page 17 is a statement showing distance, comparison of rates and charges on horses and mules with rates on cattle, from points in Nebraska to Sioux City, Iowa. I have used the minimum weight of 23,000 pounds on horses and mules and 22,000 pounds on cattle. The cattle rates are those that became effective January 25, 1932, and the horse rates are those that were put into effect in compliance with the decision in 13273.

[fol. 1083] It will be noted that the revenue per car on horses is substantially greater than that on cattle; and this figure is shown also by the percentage relationship columns shown to the right-hand part of the page.

Now, on this page there are some stations from which rates are not shown. This means that some of those stations are not participating in any rates from those stations to Sioux City. Most of the stations from which rates are not shown are those on the Union Pacific.

Page 18 is a similar comparison, but I have used the minimum weight of 21,600 pounds on horses and mules as compared with the 22,000 pounds on cattle to Sioux City, Iowa, and have used the rates in effect January 1, 1932. I have also shown the per car mile revenue and the per-ton-mile revenue.

It will be noted that the ton-mile revenue on some of

these movements is extremely high. For instance, referring to Norfolk, in the first line, a distance of 76 miles, it will be noted that the horses and mules yield a revenue per ton-mile of 50.6 mills, and the revenue on cattle was extremely high, which yields a revenue of 47.2 mills.

I think it is abnormally high for even short hauls, and I say that for this reason: That in a study submitted by witness Wettling in I. C. C. Docket 17000, Part 2, involving the 59 roads in the western district as of December 31, 1924, horses and mules, with an average haul of 226 miles, yielded a per-ton-mile revenue of but 24.36 mills and a per-[fol. 1084] car-mile revenue of 28.45 cents. Now, if we compare those figures with the figures shown on this page, I think it would be apparent that the earnings here are unreasonably high.

The per ton mile revenue was 24.36 as compared — 25.8 on page 18, and the per car mile revenue was 28.45 compared with a per-car mile revenue here on cattle of 28.3 cents, and 28.1 cents per car mile on horses and mules, 26.1 per ton mile revenue on horses and mules.

However, the average haul on cattle and calves for the 59 roads was somewhat greater, and the revenue per ton-mile and per car-mile was somewhat less, the revenue per ton-mile being 18.52 mills, and, per car mile, 21.43 cents.

On page 19 is a similar comparison where I have used the minimum weight of 23,000 pounds on the horses and mules.

On page 20 is a statement showing distance, comparison of rates and charges on horses and mules with rates and charges on cattle, from points shown to Chicago, Ill. While the rates are not involved in this proceeding to Chicago, I have set in the page for information purposes. It will be noted that I have used both the 23,000 pound minimum weight and the 21,600 pound minimum weight in connection with the revenue on horses and mules.

Page 21 is a statement showing a comparison of the rates and revenues on horses and mules with cattle to Chicago, the old rates on horses being used, and the present rates [fol. 1085] on cattle, or those rates that became effective January 25, 1932, are used.

It shows that under the present adjustment the revenue earned on horses as compared to the revenue earned on cat-

tle varies from 125 per cent to as high as 141 per cent greater. I think the figures are self-explanatory.

Page 22 is a similar comparison from the same stations to Chicago in connection with a 30 foot 6 inch car and the present rates on horses and mules, and, I believe, is self-explanatory.

Page 23 shows a somewhat similar comparison, and the caption, I believe, will point out just exactly what is covered.

On page 24 is a similar comparison involving rates to South Omaha and the percentage relationship of those horse rates to the cattle rates.

Now, it should be remembered that these cattle rates are the rates in effect at the present time but are not in the rates that would be in effect if the 17000, Part 9, rates were in effect on intrastate traffic.

Some time ago the carriers filed an application with the Nebraska commission for authority to apply the interstate scale on the intrastate traffic. That matter was set down for hearing and is now pending a decision; and, in connection with that matter, I have been authorized by the Commission to say that in so far as the record shows and the other information at hand, the application of the carriers [fol. 1086] will be granted to put in the 17000, Part 9, rates to South Omaha.

The only thing in the case was the fact that the carriers were checking the rates on a basis of the mileage to Omaha, and the market is really at South Omaha, Nebr., and in prescribing those rates we will use the mileages to South Omaha.

A check of those rates indicates that there will be an increase of between 10 to 11½ per cent over the present rates.

I believe page 25 is self-explanatory. It will be noted that the present horse rate to the old cattle rate varies from 112½ per cent *of* 125½ per cent. The order provided that the horse rate should be 115 per cent of the cattle rate, but apparently, in checking in the rates there is some discrepancy, as is shown by these percentage relationship figures.

Page 26 shows the same kind of information for the rates to Sioux City, and the percentage relationship which should have been 115 per cent are as shown in the last column on

the right-hand side. Those per cents vary from 102-.8 per cent to 123 per cent.

Those percentages are affected to some extent by the checking of short-line rates and cross-country competition, which will affect the exact percentage relationship of 115 per cent as prescribed by the commission in Docket 13273. [fol. 1087] The Interstate Commerce Commission conducted an exhaustive investigation, and our commission in a co-operative proceeding and in several conferences with the Interstate Commerce Commission, finally arrived at the conclusion that 115 per cent of the cattle rate should apply on horses and mules.

With the idea in mind that the new rates on cattle will be about 10 per cent higher than the present rates, from Nebraska to Kansas City and Sioux City and the other Missouri River markets, and to South Omaha when we can get the new rates in, it should act to reduce that spread between the old spread and what the spread should be now. In other words, the new rates on horses and mules should not exceed 110 per cent of the new cattle rates because the new cattle rates have, or will be, increased approximately 10 per cent under the 17000, Part 9, decision.

We have had heretofore a decision which increased the Nebraska rates; and somewhat prior to that, under an order of the Director General, the rates from stations north of the Platte River in Nebraska on the C. B. & Q. in particular, were increased to observe certain spreads prescribed by the commission between the Omaha and the Kansas City market. So that at the present time, even, we have rates materially higher than we feel are justified.

In 1918 we originated in the State of Nebraska 197,000 cars of livestock; and, while that figure has dropped considerably, we are still originating a substantial volume of [fol. 1088] livestock, including horses and mules; and we think that factor should be taken into consideration in the prescribing of reasonable maximum rates.

Referring to page 27, this page is introduced for the purpose of showing the traffic density of the roads in Nebraska and those same roads for the system figures, and is designed to show that the ton-miles of revenue freight per mile of line for the seven main roads operating in Nebraska have increased more in proportion in Nebraska than they have for the system figures.

For instance, referring to the year 1921, under the heading "Systems," it will be noted that the ton-miles of revenue freight per mile of line amounted to 999.429 net ton-miles, and in 1930 this figure had increased to 1,181,000 plus, or a percentage increase of 11.9 per cent; whereas the same figures for Nebraska show that the increase is slightly greater, amounting to approximately 13 per cent.

Pages 28 and 29 should be taken together and is a statement showing the operating, maintenance, and general expenses per mile of road for that portion of the lines lying within the State of Nebraska as compared with the portion outside of the State. The figures are for the year 1930.

It will be noted that the North Western figures show an operating expense per mile of road of $7,112 plus in Nebraska and a figure of $12.675 per mile of road for that [fol. 1089] portion outside of the State. The other figures show similar information.

On page 29 it will be noted that under the St. Joseph & Grand Island and Union Pacific, the percentage relationship of Nebraska to the balance of the system per mile of road shows a uniform figure. This is accounted for by the fact that the prorate is the same on all of the expense items, whereas the other expense items are allocated to the actual expense in Nebraska where it is possible to allocate directly, and the others are compiled on a train-mile or prorate basis.

On pages 30 and 31 are shown the bases for the division of the expenses, operating revenues, etc., as between freight and passenger, to be used in connection with the figures in the following pages.

On page 32 is shown a statement giving the operating revenues, expenses, net railway operating income, and rate of return subdivided between freight and passenger for Nebraska only, all roads treated as one system, for the year 1927. The figure shown in line 26, the investment as of December 31, 1926, should read 369 million instead of 389 million.

It will be noted that the annual rate of return on the property used in the transportation service amounts to 6.061 per cent for the total; freight, 9.04 per cent; and, passenger, 1.356 per cent. And the dollar sign shown in front of that figure should be eliminated.

Page 33 covers similar information for the year 1928; [fol. 1090] page 34, 1929; page 35, 1930; page 36, 1931. Here

it will be noted that the annual rate of return on the investment has dropped to 3.456 per cent for the total. The other figures, I believe, are self-explanatory.

On page 38 is a statement showing the receipts of livestock at the South Omaha market for a series of years. This statement shows the receipts by rail and truck.

It will be noted that horses and mules, in the next-to-the-last block, in 1927, shows that 11.53 per cent of the total receipts were trucked in. This figure has increased each year until in 1931 it amounted to 24.64 per cent; and, for the first 4 months of 1932, this figure amounted to 27.59 per cent.

Now, this trucked-in situation is serious, and it has led the carriers to put in rates on a much lower minimum than is usually applied for shipments of livestock. The lowest minimum now is 6,500 pounds, and this applies on cattle, calves, hogs, etc., with a rate which is approximately 150 per cent of the 17000, part 9, rate. That is where the minimum car of 6,500 pounds is used. And where a car of 7,000 or 8,000 pounds is used, the rate is somewhat lower than the 150 per cent basis.

On page 39 is a statement showing the length of the truck haul involving livestock into the South Omaha market. It will be noted that the average haul from Nebraska to — 79.4 miles. This figure is taken from the motor truck record of the Union Stockyards. They made a special study of the [fol. 1091] movement into South Omaha.

Back in 1919 we made a careful check of the movement of trucks coming into South Omaha, the number, the length of haul, the kinds of loads that they were moving it, and what they were moving out, in connection with an order issued by our commission prescribing rates on trucks. Now, those rates were in effect for a couple of years, but it was impossible to police the situation, so we gave the matter up. And this study was made as a matter of information to determine what the length of haul was now. At that time the average length of haul was only about 35 miles.

Pages 40 and 41 is a statement showing the chattel mortgages filed in each county in the State of Nebraska for the years 1927 to 1931, inclusive. These figures can be matched up against the other figures necessary for movements from certain counties. As I recall it, in one of my

exhibits submitted in the original case, I showed movements from some of the counties, and in some of the pages in this exhibit I show the production in various counties of horses and mules.

On page 41 are shown the total figures for the chattel mortgages filed by years. It will be noted that in 1927 the average value of the chattel mortgage was $112 plus. In 1931 this figure had dropped to approximately $92.50 plus. These are submitted to show the general economic condition in so far as it relates to the chattel mortgage situation in Nebraska.

[fol. 1092] On page 42 is a statement showing the failed banks in Nebraska for the year 1927. It will be noted that in that year 41 State banks failed. The location and the names of those banks are shown on the page, and the total deposits of those banks are shown on the page, and the total deposits of those failed banks is shown in the central portion of the page, which, in that year, amounted to $11,508,000 plus, or a figure representing 10.3 per cent of the total deposits in all of the banks for the biennium beginning in 1926 and ending in 1927.

On pages 43 and 44 is shown similar information for the year 1928. Here it will be noted, on page 44, that 60 State banks failed in Nebraska for that year, having a total deposit of over 13 million dollars.

On pages 45 and 46 is a statement showing the failed banks in the year 1929, and it will be noted that 77 banks failed in that year, having a total deposit over 23 million dollars, and the total deposits in all banks for the biennium amounted to 130 million. Now, this 23 million dollars in the failed banks amounts to 17.6 per cent. But if we apply to that figure the total deposits in the failed banks for the year 1928, we get a total deposit in the failed banks of over 36 million dollars, which represents 27.7 per cent of the total deposits in the banks for the biennium.

On page 47 is shown the information for the year 1930. It will be noted that 40 banks failed in that year with total deposits of over 8 million dollars.

[fol. 1093] On pages 48, 49 and 50 are shown the failed banks for 1931. It will be noted that this figure has increased to 99 failed banks for that year, with a total deposit of $28,577,815.37. And the total for the next to the

last column should read $83,010,507.50. And the percentage figure in the last colmun should be 34.43.

In other words, the per cent of the failed banks in 1931, based on the deposits as against the total deposits for the biennium, is represented by 34.43 per cent.

If we add to the deposits in the failed banks for 1931 the deposits in the failed banks for 1930, we arrive at a figure of $37,460,000 plus, which represents 45 per cent of the total deposits of all banks for the biennium.

Page 51 is a statement showing in graphic form the bank failures in the various counties. The legend is shown in the left-hand corner of the page, the figure 1 representing the year 1929 and the figure 4, for instance, representing 1932.

For example, referring to Sioux County, in the upper left-hand corner, it will be noted that in 1929 there was one bank failure and in 1931 there was one bank failure, which means that at the present time Sioux County has no bank at all.

There are several counties within the State which at the present time do not have any banking facilities.

On page 52, I have some general statistic- regarding the State banks. It will be noted that in 1921 there were [fol. 1094] 1,010 banks in operation; that in 1931 there were but 562 banks in operation. And on April 15, 1932, there were but 464 banks in operation, or a figure representing 46 per cent of the number in operation in 1921.

On this page is shown the various divisions, and I believe they are self-explanatory, except I would like to call attention to the last column in the second block, representing the cash on hand in these banks. In 1921 it amounted to over 9 million dollars, and in 1931 it amounted to but $4,800,000.

It also will be noted that the total deposits have dropped from 210 million in 1921 to 126 million in 1931.

I think that is all I have to offer, except that I do think that the complainants in this case, the Texas Livestock Shippers' Protective League, should be here at this time. They have attacked our rates; and, in view of the fact that they are not here, I can't help but feel that the complaint should be dismissed.

We were forced into this proposition, and there is no one here to take the shippers' side. I am not here to take

the shippers' side in so far as the Texas people are concerned. I am here to try and maintain our level of rates.

(Exhibit C-295, Witness Ross was received in evidence.)

Cross-examination.

By Mr. Flansburg:

Prior to the decision of the commission in Docket 13273, the Nebraska case there was no prescribed relationship [fol. 1095] between cattle, hogs and sheep in Nebraska. That was also true in connection with horses and mules versus cattle. The horse and mule rate was named in dollars per car whereas the other rates were named in cents per hundred weight. That particular decision is one of them that has been reopened in this case, and in that decision I believe the commission did prescribe a definite relationship between horses and mules and cattle and hogs and sheep.

The rates involved in 13273 were only the rates into the markets; other rates were not in the proceeding. When the 13273 rates were put in we had really three sets of rates on livestock in Nebraska, one set moving the traffic into the market, one moving the traffic to interior points and one moving the stockers from the markets back to the interior points. The Nebraska commission still has before it the rates on livestock intrastate in Nebraska, following the decision of the commission in Docket 17000, part 9. The Nebraska commission has instructed me to say that just as soon as time will permit, an order will be entered prescribing the rates published in 17000, Part 9, for application intrastate within Nebraska, using the mileages to the market rather than to Omaha, which means that we will have the same rates intrastate as will be applicable on interstate traffic, except in so far as it relates to the livestock outside of horses and mules, hores and mules not being in the 17000 case. I do not think that since the decision in Docket 13273, or prior thereto, there has been any definite relationship between horses and [fol. 1096] mules and other livestock from Nebraska to destinations in western trunk line territory other than the Missouri River. I do not think that outside of Docket 13273 and 12268, which are reopened in the present hearing, there has been or is any definite relationship between

the varieties of livestock and between the varieties of livestock and horses and mules. There is a definite relationship, or supposed to be—between the two commodities, in so far as the territories covered there, to the markets from Nebraska. But owing to the fact that there is a certain amount of cross-country competition and short-line mileages, that relationship varies and it isn't 115 per cent, but in some instances it will be slightly below and in other instances it will be greater.

There is not any definite relationship between or on interstate traffic from Nebraska to the markets at the present time, by reason of the fact that the horses and mules were not included in the 17000, Part 9 case. We feel that the horse and mule rate should be related to those rates by not to exceed 110 per cent.

We object to the class A because Nebraska has been divided up into two sections in the class rates, and the rates from the eastern portion of the State are, of course, somewhat lower than from the western part; and, in our opinion, it would serve to penalize the producers in the western part of the State, and we produce a substantial volume of livestock in the western half of the State.

[fol. 1097] The class rates are designed to carry a high-grade traffic and miscellaneous traffic. On the other hand, livestock is a commodity that is raised in all sections, an agricultural commodity, and I can't see where it should be related to class rates in any way, shape or form. Nebraska has canned goods plants in the eastern part of the State, with possibly one plant at Grand Island, which is still in the so-called eastern half of the State, and each state in western trunk line territory, with the possible exception of South Dakota, has canned goods plants, and canned goods are shipped from those states. The Commission has related canned goods rates to first class. The difference between canned goods and horses is that canned goods are a manufactured finished product, centralized; whereas livestock, horses and mules, for instance, are not. They are shipped from all points.

I have always contended that the class rates that prevail in western trunk line territory did not follow the transportation conditions in so far as Nebraska is concerned. One of the thoughts the commission probably had in mind in prescribing the scales was that the different levels of class

rates in western trunk line territory are presumed to cover the different transportation condition in that territory. I have produced figures repeatedly showing the traffic conditions in Nebraska are materially more favorable than those in Iowa. I have testified that until the 17,000, Part 9, rates went into effect, the horse and mule rates in my testimony were approximately or substantially 15 per cent above the edible livestock rates. This was the provision provided by the Commission in its decision in 13273, involving the [fol. 1098] rates from Nebraska to the Missouri River markets. It is my contention that the horse and mule rates should be related only 10 per cent above the 17,000, Part 9, edible livestock rates.

I have recently made a study as to the loss in value of the crops, 1931 against 1927, and, taking the grains, the [fol. 1099] five major grains, and the hay, wild hay and alfalfa, and all the livestock, I find that those values are about 229 million dollars below what they were in 1927. It is true that in 1927 our production was above the normal, which woud have some effect on that figure of 229 million. But if that figure were cut down 25 per cent, which would offset that difference, the farmer would still be in pretty bad shape.

I do think, frankly, that 110 per cent, if it was put on the 17000, part 9, will give more increases over the rates that have been found not to be reasonable maximum rates by the commission but rates which were set up and published voluntarily by the carriers in 13273.

We are in a depressed period, which is not limited to the farmers. Workers in industrial centers are without employment.

In 1927 the production in Nebraska was greater than usual, the values not so much greater but it made the total figure a little higher because of the greater production.

L. E. Wettling, called as a witness and being duly sworn, testified as follows:

Direct examination.

By Mr. King:

I am manager, statistical bureau, western railroads, located at Chicago.

I have been asked to present here some testimony and exhibits dealing with the financial conditions of the railroads [fol. 1100] of the western district and the railroads generally as a whole in the United States and some other data, which I am prepared to introduce.

Page 1 of Exhibit C-296 shows the financial conditions of the class I carriers or railways of the United States for each of the years 1921 to 1931, inclusive, showing the investment of road and equipment (accounts 701 and 702), material and supplies, and cash as of the end of each of the years and the total of the amounts, excepting for the year 1931, in which year, because those figures are not yet available in their final form, we used the values as of December 31, 1930.

We have shown the net railway operating income in each of the years after the details are shown following the property investment, the rate of return on the total property investment being in line 5, and also the rate of return on property investment as found in Ex parte 74 by the Interstate Commerce Commission plus net additions and betterments from that date forward from year to year. The rate of return on the book values as shown is shown in line 30, and, on the Ex parte 74 findings plus additions and betterments, in line 31. Notations are made with regard to any exceptions.

The next page shows the same data for the eastern district, including the Pocahontas region.

On the following page are shown the same data for the western district, wherein we show that the highest rate of [fol. 1101] return for any one of the years, 1921 to 1931, inclusive, was earned in the year 1929 and was 4.41 per cent.

On the basis of the Ex parte 74 findings, brought down to date, the highest rate of return was 4.93 per cent in 1929. In 1931, based on the property investment as described for the year ended December 31, 1930, it was 1.83 per cent and 2.03 per cent, respectively.

On the following page, I have made an extract of an advance showing for the first 3 months of 1932, the final data not having yet been distributed. This compilation was made by the Bureau of Railway Economics, which issues monthly statements of this kind based upon the monthly reports of the carriers to the Interstate Commerce Commission.

This shows that for the total class I railways reporting to that date, 167 class I railways, representing 242,047

miles operated, the gross operating income for the first 3 months of 1932 showed a decrease of 22.8 per cent. The operating expenses showed a decrease of 22.7 per cent.

Sixty-seven class I railroads operated at a loss for the first 3 months of 1932, of which 19 were in the eastern district, 14 in the southern, and 34 in the western district.

The western district showed net railway operating income of $6,725,197, which was at the annual rate of .36 per cent; that is to say, thirty-six one hundredths of 1 per cent on their property investment for the first 3 months. For [fol. 1102] the corresponding 3 months in 1931, their earnings were $34,338,385, or at the annual rate of 1.84 per cent.

The figures are shown in slightly more detail at the bottom of the page.

I have made a calculation showing the shortage under 5¾ per cent of earnings for the western district as a whole for the years 1921 to 1931, inclusive, in the upper half of the next page, based upon the property investment according to the I. C. C. findings in Ex parte 74 plus additions and betterments to the end of 1930, and using that same 1930 valuation for 1931.

This shows that during this period the railroads' net railway operating income was $1,730,702,547 short of 5¾ per cent.

Based on the book value, which is shown in the lower half of the statement, 1931 being again a duplication of the 1930 figures, the loss or shortage under 5¾ per cent for the period was $2,440,463,843.

I show on the following page the trend of operating expenses for the western district for maintenance of way and structures, maintenance of equipment, and total maintenance, and transportation expenses, and total operating expenses, and the total operating revenue.

The maintenance of way and structures and equipment, combined, showed that in 1931 the expenditures were 65.93 [fol. 1103] per cent of the average of the 5 years, 1925 to 1929 inclusive. The operating expenses as a whole were 71.56 per cent of the average of the same 5 years mentioned, and the operating revenues were 68.09 per cent.

The number of employees is shown, average for the years 1926 to 1931, and shows the number to be 71.52 per cent in 1931 of what they were in 1926. The number of employees

for the month of January, 1932, was 60.78 per cent of the average shown for the year 1926.

Freight traffic statistics in the western district are shown for each of the same years, 1921 to 1931, inclusive, and the relative. There is also shown the same data for revenue tons carried, revenue tons 1 mile, freight revenue, ton-miles per mile of line, average haul, and the revenue per ton-mile. The revenue per ton-mile in 1931 was 79.89 per cent, indicating that the average revenue per ton per mile has receded by 20.11 per cent from what it was for the year 1921.

Passenger traffic statistics are shown in the last part of the statement for the same years and show very heavy reductions in all respects. The figures speak for themselves. The most significant figure in the relationship lies in the revenue and the passengers 1 mile. The passenger revenue was for the year 1931, 37.81 per cent of the revenue in 1921. The passengers 1 mile per mile of line was 49.51 per cent of what they were in 1921.

[fol. 1104] The average number of employees for each of the years 1926 to 1931, inclusive, is shown on the following page; the average number of employees, their total compensation, and the average compensation per employee.

There is a slight change in the average compensation per employee throughout the period. The total compensation receded from 2,990 millions plus to 2,127 million plus. The number of employees receded from 1,805,780 in 1926 to 1,278,175 in 1931. This has relation to all class 1 railroads and the large switching and terminal companies for the United States as a whole.

On the following two pages are shown statistics with regard to carloadings by weeks and cumulative for the United States and for the western district.

To show what the railroads must provide, for if they are to remain in business, I show on the following two pages the funded obligations maturing in the 6 years, 1932 to 1937, inclusive. At the foot of the second page of this showing, the totals are given.

The total obligations other than equipment obligations to be met are $39,814,000—I will not recite the last figures—in 1932; $99,166,000, in round figures, in 1933; $146,923,000 in 1934, $51,553,000 in 1935, $199,201,000 in 1936, and $28,392,000 in 1937.

The equipment obligations to be met and provided for [fol. 1105] are $46,509,000 plus in 1932, $45,770,000 plus in 1933; $45,565,000 in 1934, and $44,898,000 in 1935. Whatever equipment obligations, if any, are maturing after 1935 are not yet reported.

On the succeeding page I show the Mississippi River traffic on government owned barges for the years 1924 to 1931 and the 2 months of January and February, 1932.

The average monthly tonnage for a term of years, beginning with 1919, is shown in the figures below this statement, and shows the growth in a general way of this competing transportation.

In 1919, 8,731 tons per month; in 1920, 13,392 tons per month; 1921, 36,939; 1922, 49,841; 1923, 59,203; and so on, as shown in the footings of the table above by months, increasing to 70,792 per month in 1924, and reaching a maximum in 1928 of 119,630, and then gradually receding to 97,598 in 1931. However, the first 2 months of this year show, for January, 130,807, and, for February, 112,700.

The principal commodities that are being carried by the barges, federal barges, are shown in the table on the lower part of the sheet.

On the succeeding 3 pages is shown the situation as to the Panama Canal—one, of course, of our heaviest competitors in the matter of diversion of traffic, especially of the very long haul traffic. The figures speak for themselves, and I don't think, need much explanation.

[fol. 1106] The second page shows the cargo passing from the west coast of the United States to the east coast of the United States, and the third page shows cargo passing from the east coast of the United States to the west coast of the United States, for each of the fiscal years ended June 30, 1927, to 1931, inclusive.

Following that I show freight traffic density of class 1 roads by States in the western district for the years 1926 to 1930, inclusive. The figures are not yet available for the year 1931, but, when they are compiled, will show a drastic decrease below the figures here given. However, for the regions as a whole this is shown on the page at the foot, showing the average mileage operated for each of these years and including the year 1931. It indicates how far below the average ton-miles per mile of road are under the figures in the statement above.

We make this comparison for the western district as a whole, which is an average of 1,161,811 tons 1 mile per mile of line for 1926, within 6,000 of that for 1927, 1928 being 1,210,000 in round figures; 1929, 1,232,000 in round figures; dropped to 1,058,500 in 1930; and then a further drop to 818,739 average in 1931.

This differs very slightly, one table from the other, in that in the upper table it is customary for us to use the mileage of the Wabash and of the Illinois Central that is operated within the western district. In the lower table the [fol. 1107] districts are segregated as usual by the Interstate Commerce Commission and include no traffic of the Wabash or Illinois Central.

The next table is a reproduction of a table introduced in one of our southwest cases, showing the ton 1 mile and the tons 1 mile per mile of line for the southwestern states, the western trunk-line states, and the Mountain Pacific States. They are enumerated and show for themselves. There are included class I, class II and class III roads, merely to show the effect that the inclusion of those short line roads has in making up these statistics.

Using the southwestern states, with their class II and III mileage, which is considerably greater relatively than in the other districts, and using that traffic density of 915,930 tons per mile of line as 100 per cent, as a base measure, we find that the western trunk-line States have a traffic density of 122.39 per cent thereof, and the Mountain Pacific States a traffic density of 126.99 per cent thereof.

This same calculation is made for the year 1930 (on the next page), the latest that was available to us, and these relationships are shown to be, basing again on the southwestern region, which in this year was 805,416 tons 1 mile per mile of line and the average, and using that as a measurement of 100, we find the western trunk-line roads were 125.8 per cent and the Mountain Pacific territory 121.9 per cent, relatively.

[fol. 1108] After this set of exhibits was prepared, it was found that one of the items that it was desired to show had been omitted and it is here brought in as a separate page, marked Exhibit C-297.

This covers the operations of the principal lines in the western trunk-line territory, divided into groups, the first group being those roads operating within western trunk-

line territory 75 per cent or more of their total mileage. The Group 2 embraces those roads which operate more than 50 per cent but less than 75 per cent of their mileage within the western trunk-line terrritory; and Group 3 comprises those roads which operate between 25 and 50 per cent of their mileage within the western trunk-line territory.

Those operating less than 25 per cent were ignored as not being really representative. In fact, we felt that the three roads in Group 3 were not really representative because such a large preponderance of their mileage lies without the territory.

This is shown for the years 1921 to 1931, both inclusive; and for the 10 years, 1921 to 1930, a general average of the whole period is shown in the next-to-the-last column of the second half of the group of figures.

The roads and their mileages are shown below.

The showing is that for the years 1921 to 1930, inclusive, the average rate of return in the first group was 3.53 [fol. 1109] per cent; in the second group, an average of 4.10 per cent; and, for the third group, an average of 4.37 per cent; the average of the whole being 3.93.

This seems to demonstrate pretty conclusively that the greater percentage of the mileage which lies within the western trunk-line territory has the lowest rate of return, as the second group, which has from 50 to 75 per cent of their operations in the western trunk-line territory, shows higher than the group having 75 per cent or more; and the next shows still higher, which has less than 50 but over 25 per cent, showing 4.37.

For the year 1931 this first group which operates from 75 to 100 per cent of the mileage within the territory, and the general average of which is, by the way, 92 per cent, which earned an average of 3.53 per cent for the whole period, 1921 to 1930, in 1931 the earning was only 1.63 per cent.

Group 2, which earned during that period mentioned of 1921 to 1930, 4.10 per cent, in 1931 earned only 2.01 per cent. And the third group, which earned 4.37 for the 1921 to 1930 period, earned in 1931 only 2.04 per cent—showing a constant recision and that that group of roads is the worst off of the other sections generally of the western district.

We have some strong lines in this latter group, the Santa

Fe and the Northern Pacific being two of the strong lines. In the second group we had the Rock Island and the Great [fol. 1110] Northern, the Illinois Central, and also the Missouri Pacific, which were doing relatively fairly well. We all feel that none of them have been making any extraordinary showings or favorable showings.

Exhibit C-298, consisting of 4 pages, shows just a little of the general situation with regard to horses and mules, beginning with the year 1910 as of April 15, and each of the years succeeding.

On page 1 there is shown the number of horses—in thousands, the value per head, and the farm value, as compiled from year to year by the United States Department of Agriculture. The source is shown at the foot of the page.

Of course, we all know that there has been a very great decrease in horses, while in the matter of mules, there has been really a slight increase. The values have dropped drastically, and the index numbers of these changes have been shown in the number of horses and mules—the last two columns on page 1 of this exhibit.

The horses are now 63.9 per cent of what they were in 1910; mules are 120.7 per cent. The horses have been practically a steady decline since 1919. In 1918 we had really the highest movement. They have dropped from 108.7 to 63.9. The mules have made an almost steady increase up to 1925, when they stood at 140.6 per cent of the number in 1910, and have receded slightly since that from year to year to 120.7 per cent in this year.

[fol. 1111] Of course, we all know the reasons for this. In the Southeast they hadn't abandoned then their power quite so much there in the way of mule power as they have in the rest of the country. But in the remainder of the country, particularly in the urban areas, horses have been very largely abandoned. Every farmer that could afford it, where it was of any real advantage to him, has abandoned horses and is using tractors and other farm machinery; some of them finding lately, and showing indications of changes, have found that certain kinds of farm machinery are not economical in small areas and are inclined to go back to the horses, according to reports that are coming from time to time. The change, however, is very slow. This has had a serious effect, of course, upon the horses and mules.

The estimated number on farms as of January 1, 1920, 1925 and 1932, shown in thousands, on the next page, speak for themselves.

On the following page is shown the monthly farm prices of horses and mules and specified feeds for the years 1910 to 1931, inclusive, and for March 15, 1932, giving the average weighted price.

The average value of horses since 1910 has receded from $146 average to $62, the lowest point reached, in March 15, 1932. The data are not available for mules except beginning with the year 1926, when the average price was $94, which has fluctuated between $94 and $91 in the next 4 years, and in 1931 dropped to $74, and in 1932 dropped to [fol. 1112] $68.

Of course, the values have dropped, but take it, for instance, with respect to the price of $62 for horses as compared with $146, ranging down to $130 during the War period. They now pay for corn, March 15, 1932, 32 cents a bushel, as against $1.53 a bushel in 1918.

Mules: At the time they were $94 in 1926, corn was costing them 75 cents and now 32 cents. Oats, 22.8 cents per bushel versus 70 cents in 1918, and fluctuating all the way from 36.2 in 1910 to as much as 80 cents. Timothy hay, all hay, and prairie hay, shown in the last three columns of this page, have dropped very much contrasted with the average of preceding periods when the prices of horses and mules were higher.

I don't cite these as particularly giving a direct indication of the relationship of the feed with the prices but as indicating one of the factors which are to be taken into consideration in calculating the cost of ownership of horses and mules.

To show how rapidly the horse and mule power has been supplanted on the farms by machinery, I show the number of trucks and tractors on the farm for the years 1920, 1925, and 1930. We show for the years 1920, 1925, and 1930 the number for each of the States in the western group of States, and also in the Mountain Pacific group, the total for the western district, the remainder of the entire United [fol. 1113] States, and the United States as a whole.

In 1920 there were registered 51,091 motor trucks on farms; 187,225 for 1925; and, in 1930, 369,805 — an increase of 623 per cent over 1920 for this group of States

shown in the first block. The increase over 1925 was 97.52 per cent, and that ranged all the way from 8.49 per cent in Missouri up to 229 per cent in Arkansas — generally looked upon as one of our backward States.

The State of North Dakota increased from 743 to 6,656 in 1925, and to 16,990 in 1930 — an increase of 2,186 per cent over 1920.

The poverty-stricken State that we heard so much about yesterday increased from 4,249 in 1920 to 6,824 in 1925 and 14,816 in 1930.

In the matter of tractors, we have, for this same group of States given here, 140,582 in 1920, 269,223 in 1925, and, in 1930, 511,971 — an increase of 264 per cent over 1920.

For the United States as a whole, we have 131,551 in 1920, 478,956 in 1925, and 900,385 in 1930 of motor trucks on farms, being an increase of 584 per cent over 1920.

Tractors increased from 229,000 in 1920 to 506,000, in round figures, in 1925, and to 920,000 in 1930 — an increase over 1920 of 301 per cent.

The increase, of course, was much less relatively between 1925 and 1930 than it was between 1920 and 1925, but it is [fol. 1114] the cumulative effect.

I would like to read just one item, in addition to what I have said, from the Year Book of Agriculture for 1931, on page 576, showing the changes in numbers on farms of horses and mules from 1870 to 1930. There was practically a constant increase in numbers up to just prior to 1920, since which time it has been falling rather rapidly; but, at that, we have now about the same number of horses and mules that we had in 1900.

The statement I would like to read is as follows:

"The reduction in horse numbers in the last decade has been due to decreased demand, caused by the increased use of mechanical power in carrying on farm operations and by the replacement of horses by motor vehicles in towns and cities."

That's really the whole reason that has brought this matter about.

We have also to remember that incidentally some very large amount of hay land has been abandoned. It has had a very drastic effect on the price of hay and a great deal of former hay land has been put into grains and other

feeds, which have helped to bring about the surplus that we now have, and which is holding down and hurting the prices; and in many ways the machinery is not an unmixed blessing on the farm.

(Exhibits C 296, 297 and 298, Witness Wettling, were received in evidence.)

Cross-examination.

By Mr. Ross:

The Witness: We use the investment figure at the end [fol. 1115] of the year for compiling the rate of return. In our monthly figures, we still continue to use the investment as of the beginning of the year; but in making the annual reports, largely led by the Interstate Commerce Commission in their manner of doing it, we have been following it so far as it was possible. In other words, we use the beginning of the year for the months through the year, and for the annual reports we use it until about the middle of the year, and when the figures for the end of the year become available, then in any statements we make thereafter we use the end of the year. We realize that neither figure is quite exact. It would be somewhere in the middle of the year where the average of the year's investment would be reflected.

F. B. Clark, called as a witness and being duly sworn, testified as follows:

Direct examination.

By Mr. King:

The Witness: I am assistant general freight agent of the Missouri Pacific Railroad Company, with headquarters at St. Louis, Mo.

Exhibit No. C-299 brings forward for the year ending December 31, 1931, the total receipts of cars by rail at the Kansas City Stock Yards on ordinary livestock, as well as horses and mules, and draws comparison with the year 1930.

This exhibit brings down to date, or, at least, in so far

as we have been able to secure the information, the data [fol. 1116] shown in Exhibit C-205 as filed by witness Clark at the Kansas City, Mo., hearing in October, 1928.

In the lower block of the exhibit we have again indicated the total shipments of cars for the year by rail, bringing this information down to date.

The prior comparison, as shown in Exhibit C-205, filed in the instant docket, was 1927 with 1926.

Exhibit C-300 is bringing forward to date witness Clark's Exhibit C-206, as filed at the October, 1928, hearing in the instant cases at Kansas City, indicating the receipts and shipments of livestock—that is; ordinary livestock—together with horses and mules, by cars, for the year 1931, and likewise drawing comparisons with the year 1930. Our Exhibit C-206 indicated like information for the year 1926 and drew comparison with the year 1925.

Our Exhibit C-301 is somewhat of a different showing than per our previous exhibits, C-205 and C-206, as at that time the information—that is, in 1925, 1926, 1927, and 1928 was not indicated in this manner.

In this exhibit we have excerpted from the thirty-ninth annual report of receipts and shipments of livestock at St. Joseph Stock Yards from all sources for the year 1931 and draw comparisons with the year 1930. We would understand this to mean by truck as well as by rail, or, for ex- [fol. 1117] ample, on any horses or mules that were driven to market.

(Exhibits C-299, C-300 and C-301, Witness Clark were received in evidence.)

J. E. Flansburg, called as a witness and being duly sworn, testified as follows:

Direct examination (pro se):

The Witness: I am assistant to the vice president, Chicago and North Western Railway Company; representing in this case that company as well as the Chicago, St. Paul, Minneapolis & Omaha Railway, and also being chairman of the defense committee of the western trunk lines in connection with the reopened Docket 13273, Nebraska Live Stock Case, and Docket 12268, the South Dakota case, in

so far as those two cases pertain to rates on horses and mules.

Prior to the decisions in those two cases, there was not any definite relationship in western trunk-line territory between horses and mules and cattle, for example, or between the different varieties of livestock. Those two cases were limited in their scope, as the Nebraska case involved the rates on livestock, including horses and mules, from Nebraska to the Missouri River cities and was a so-called undue prejudice decision and did not contain rates prescribed as maximum reasonable rates, and that was indicated in the opinion itself. The South Dakota case involved [fol. 1118] livestock, including horses and mules, from South Dakota to western trunk-line territory as a whole, particularly to the markets.

So, so far as the western trunk lines are concerned, this reopened investigation covers a limited area.

At the time we complied with the orders in those two cases and subsequent thereto, up until January 25, 1932, when 17000 Part 9, became effective, there was no definite relationship, one to the other, of the different varieties of livestock nor horses and mules as related to livestock. In fact, in many parts of the territory the rates on hogs, single deck, were the same as on hogs, double deck, notwithstanding the fact that in the two cases previously mentioned, hogs, single deck, were 115 per cent, as prescribed, over the rates on hogs, double deck.

When the carriers in western trunk-line territory met for the purpose of giving consideration to their position in this particular case, there was then pending before the commission the proposed class adjustment within western trunk-line territory. It had previously been indicated by the commission in its various reports throughout the country, particularly in the South and Southwest, that the general consensus of that body, and also the voluntary action on the part of carriers, was to relate the rates on given commodities which were produced generally throughout the territory to such first-class rate as had been prescribed [fol. 1119] in that particular territory.

The rates on horses and mules in c. f. a. territory are generally second class, which has been approved by the commission in certain cases; and in the South the rates on

horses and mules were not made in relation to the rates on cattle but were prescribed by the commission in the so-called Hudson Mule Case.

We had a situation, therefore, where, except to the limited extent heretofore indicated, there had never been any prescription of a definite relationship between horses and mules and other livestock. The carriers, in their deliberations, decided that possibly the best way to take care of the situation as a whole would be to relate the rates on horses and mules to first class rather than to other commodities which at that time were afflicted by the Hoch-Smith Resolution.

The column 45 was decided upon as one which would come closer to reflecting the proper revenue for the transportation of this commodity because that is a class A rating which generally applies in connection with light-loading commodities which carry minimum weights lower than commodities taking the fifth-class rate, for example.

It is realized that there are many transportation characteristics which are the same on horses and mules as on other livestock. In fact, horses and mules have practically all of the expensive services which livestock have, and which need not be detailed at any great length because the reports of [fol. 1120] the commission are filled with them.

The livestock case has been reopened by the commission, and, of course, it isn't known at this time just what the final result will be in that particular case; but, having in mind the fact that the reports indicate very clearly that livestock has not been given rates which measure up with the rates on other commodities due to the peculiar conditions which surround livestock, the carriers came to the conclusion that there should be no relationship between horses and mules and livestock unless it could be shown very clearly that the exact conditions which confront the livestock industry, and which the commission recognized in fixing those rates, prevailed in connection with horses and mules.

Likewise the percentages of the different varieties of livestock themselves have only been applied within western trunkline territory to a very limited extent, they also being in the two cases heretofore mentioned and being varying throughout the territory.

Expressions have been made to the effect that it is rather

strange to relate horses and mules to first class rather than to livestock; but up until December 3, 1931, there were no rates, with the exception of one, with which I happen to be familiar, on canned goods, where the commission had ever prescribed any rates in relationship to first class.

Since that time, however, and also throughout the South- [fol. 1121] west and the South, there are literally hundreds of commodities where that relationship has been prescribed; and, to our mind, there is nothing surrounding the transportation of horses and mules which would reflect any different situation than those other commodities.

Take, for example, the commodity of iron and steel and scrap iron. They have a realtionship to a certain extent in that one is a waste material of the other and it might be stated that there should be a relationship between the two. And yet we have a situation in connection with those two commodities, which move in the same character of equipment, from and to the same points, where, in the Southwest, the commission prescribed, for example, 15 per cent and 12 per cent on scrap iron and 32½ per cent on the iron and steel; and then when they get into the eastern territory, and neither one of them are made in relation to the first class, the iron and steel is on the basis of the 17000, Part 6, distance scale, and scrap iron is on 70 per cent of that particular scale.

In connection with the revenues of the carriers covering transportation of these articles, the carriers have assumed, and I think rightfully so, that the class rates as prescribed by the commission in this territory do reflect the transportation conditions as found by the commission. That statement is made without regard to our views pertaining to the measure of that class adjustment for the reason that we [fol. 1122] still have on file with the commission a petition pertaining to that adjustment, with particular reference to the overhead situation.

With that thought in mind, we came to the conclusion that that would be another reason why the rates on this commodity should be related to the class adjustment rather than to livestock or agricultural commodities, where possibly, at least, in our opinion, undue weight was given to a situation other than transportation conditions.

It may be said that commodities like grain, which are produced on the farm and are an agricultural commodity,

should not be, or have not been, related to first-class rates. But in that connection it should not be overlooked that in the Southwest the commission did prescribe rates on wheat 20 per cent of first and, on corn, 17½ per cent of first.

I realize that since that time, in 17000, Part 7, all of that was changed, and the one scale was prescribed within western trunk-line territory and one scale within the Southwest. But no one at this time is a sufficient prophet to diagnose the final decision of the commission in the reopened grain cases.

In our proposal of 45 per cent of first class, that would enable the commodity of horses and mules to be transported throughout the territory with an indication that the transportation conditions would be utilized throughout the territory according to the different levels as prescribed by the commission in the class rate case.

[fol. 1123] I realize that where the traffic originates in the western part of the teritory that the rates will be relatively higher from that territory than from the territory farther east; but that situation naturally prevails wherever there is a difference in level brought about by recognized transportion conditions.

There is a considerable movement of horses and mules from the western territory to the East, and it is likewise well known that the class rates within the East are considerably lower than those within the West, the percentages being, roughly, in Zone I, 120 per cent of the East; in Zone II, 140; and, Zone III, 150.

In the eastern territory also, the commission, in the case to which citation will be given in my exhibits, prescribed fourth-class rates to apply on horses for slaughter. Within our territory to-day, rates on horses for slaughter are voluntarily carried on the cattle basis.

I think it is recognized that horses for slaughter are a very low-grade animal, being fit for nothing else except that purpose, and it was shown in different cases before the commission that their value was approximately $5 or less per head. And yet it is contended by the protestants in this case that rates on the commercial horses and mules should be only 110 per cent of the rates on horses for slaughter which are voluntarily carried by the carriers within this territory.

[fol. 1124] Fourth class in c. f. a. territory is 50 per cent

of first, and second class is 85 per cent of first. In our territory our proposal is on horses and mules—that is, the commercial horses and mules—45 per cent of first, which, considering the difference in the rates themselves, shows that we are quite modest in our contentions.

In connection with this reopened proceeding, I have revised Exhibit No. 277, which I would like to introduce at this time for identification as Exhibit No. C-302. This particular exhibit consists of 11 pages, and some of it is brought about by the fact that in the original proposal of the western trunk lines our proposal was based upon the desires of the carriers as to the relative class adjustment in the different parts of the western trunk-line territory.

It is well known that the proposal of the carriers in that proceeding was not looked upon favorably by the commission; and, as a result thereof, this reopened case requires a revision of the rates themselves throughout our proposal. We have changed the original figures to reflect 45 per cent of the existing Zones I, II, and III within the western trunk-line territory, and the use of a column in connection with the existing rates as prescribed by the commission as contrasted with the original proposal in this territory.

On page 1 of this exhibit, I bring up to date, including 1931, the number of cars and tons of horses and mules orig-
[fol. 1125] inating on the C. & N. W. Railway in Nebraska and South Dakota compared with other livestock.

This indicates very clearly that the transportation of horses and mules is considerably less than on other livestock, although there is not so great a difference between horses and mules and sheep. This indicates that the originating proclivities of Nebraska and South Dakota are very heavy; and the traffic moves to all of the markets in the western trunk-line territory.

The previous exhibit ended with the year 1927.

To the extent that volume of movement has an effect in connection with the rates to apply on a given commodity, it is our contention that the volume of movement of horses and mules is so small that the use of the cattle rate as a base should not be countenanced.

On page 2 of this exhibit I bring up to date revised page 3 in my Exhibit No. 277 at the previous hearing. I show on this the per-car charge in dollars and cents per car on the C. & N. W. Railway on horses ond mules with other live-

stock and the total products, as shown on the statistics as reported to the commission. In the last column I show 1931 versus 1913, which indicates that on horses and mules the percentage of increase per car was 76.4, and on the other commodities, cattle and calves, for example, 65.7 per cent, and so forth.

Page 3 brings up to date page 4 of my Exhibit 277, [fol. 1126] showing the average revenue per ton on horses and other livestock, including all carload freight, on the Chicago and North Western Railway for the years 1913 to 1931, inclusive.

Page 4 brings up to date the average loading statistics of horses and mules and other commodities on the North Western from 1913 to 1931. This average loading, of course, does not show very much of an increase in connection with livestock, as it does on other commodities, which naturally is due, I think, to the fact that the standard car has remained practically stationary during that period.

On pages 6 and 7, I indicate the revenue load per car on the different commodities, including horses and mules, for the year 1930, and the average weight of the empty car, and the gross weight of the empty car and the lading in the car, and the percentage which the revenue weight is of the gross weight.

This contrasts livestock, including horses and mules, with all of the other commodities that are indicated thereon, and the figures show quite generally that the percentages of the lading to the gross weight on livestock are much less than on other commodities.

On page 8, I show the cars handled on the North Western Railway, as a system, from 1913 to 1931, using horses and mules and livestock and other products; and in the last column at the right-hand side, at the bottom, is shown the increase or decrease, as the case may be, of the different [fol. 1127] commodities for that period. It will be noticed, for example, that the movement of horses and mules has decreased 49.7 per cent, and, cattle, 1.2 per cent; whereas, on sheep and goats and hogs, there has been an increase.

Page 9 brings up to date the traffic density of the C. & N. W. Railway in the different States for the years 1923 to 1931, inclusive.

On page 10, I have indicated the proposal, in graphic form, of the carriers in this proceeding, changing, as I heretofore mentioned, the measure of the rates themselves from

the original proposal. Quite generally it is indicated that the proposal of the carriers at this time, based upon the new situation, results in reductions generally compared with the original proposal. The statement runs out at 1,400 miles, which, I think, would take care of the entire situation. On that page, at the top, where it says "Zone II," that should be "Zone III."

On page 2, third column, at the right-hand side, "Percentage of Increase per Car," on sheep, that shows "3.14," and it should be "31.4."

I would like to introduce for identification Exhibit No. C-303. This consists of 10 pages and is revised Exhibit 279 as presented at the hearing in Kansas City in October, 1928.

I hardly think it necessary to go into any particular detail in connection with this exhibit, as what was done here was simply to change the proposal of the figures as re-[fol. 1128] flected in specific examples. This particular exhibit indicates through the medium of the specific examples, which were shown in the original exhibit, the change reflected in the carriers' proposal by the use of 45 per cent of the class rates as they apply today within western trunk line territory.

The balance of the original exhibit, which it was not found necessary to revise, is, of course, a part of the record in this proceeding.

Exhibit C-304, on page 1, I indicate the percentage claim payments on horses and mules and other commodities on the North Western System during the year 1930, and it indicates very clearly the very heavy claim payments on horses and mules as contrasted with other livestock.

I previously indicated that in the eastern territory and in the southern territory horses and mules were not related in any respect to livestock. In order to ascertain, first, the percentage which the class rates are in the different territories of each other, which should give an idea as to at least the transportation conditions in the different territories, on pages 2 and 3, I have shown the eastern first-class rate as prescribed by the commission in Docket 15879, and Zones I, II, and III in Docket 17000, Part 2, in the western trunk-line territory.

[fol. 1129] It is shown there, for example, that Zone I is 125 per cent of the eastern scale, and Zone II, 140 per cent; and Zone III, 150.5 per cent, first class of first class. All of these rates were prescribed by the commission.

Likewise in connection with the southern territory that same information is shown on pages 4 and 5. So that we have before us, in so far as the class adjustment is concerned, a fairly complete picture of what was done by the commission in each of these territories.

I realize, of course, that they may not always reflect the exact situation in connection with every individual commodity, but, at least, it does give us a very good idea of the basic structure in the three territories upon which the commission has operated in the last few years.

It should also be borne in mind that the livestock rates in the different territories in the East and the South and the West were prescribed by the commission, some of them quite recently.

In order to have an idea, and also to indicate that our contention that the livestock rates in this territory are low is not far wrong, I have shown on pages 6 and 7 the relative livestock adjustment in the two territories, in the East and in the West. On page 7, I have indicated that the eastern livestock rates, as prescribed by the commission in the eastern livestock cases of 1926, are 34 per cent of first class. [fol. 1130] I realize they were not made in relation to any first-class rate, but this will show us, using that measuring stick, that the cattle rate prescribed in the East is almost fifth class, because fifth class in the eastern territory is 35 per cent of first.

Contrast that with the livestock rates prescribed in the western trunk-line territory, where one scale was used throughout the three zones in western trunk-line territory. This shows that the cattle rates in the western livestock case are 29.5 per cent of first class in Zone I, 26½ per cent of first class of Zone II, and 24½ per cent of first class of Zone III.

It is very evident that, using the so-called transportation yardstick in the two territories, the livestock rates in western trunk-line territory are below normal and certainly should not be used as a basis upon which to build rates upon another commodity such as horses and mules.

I have shown in the last paragraph the percentage which the western livestock rates are of the eastern livestock rates, and that will be shown as indicated of 109 per cent. If you will contrast that 109 per cent with the class adjustment just indicated before that, it is very clear that the live-

stock rates in our western trunk-line territory are on a very low level.

On pages 8 and 9, I indicate the same data in connection with the rates prescribed by the commission in the South, the 17000, Part 9, case, and the southern first-class rate pre-
[fol. 1131] scribed in 13494, and our Zones I, II, and III, first class, and also the western livestock cattle rates prescribed in western trunk-line territory. The results obtained are shown in the five columns at the bottom of page 9.

I previously mentioned that the commission in eastern territory had prescribed a fourth-class rate on horses for slaughter. I think it was mentioned yesterday that an examiner had proposed fourth-class rates on commercial horses and mules. As I stated, fourth class in the East is 50 per cent of first and applies in connection with a commodity much lower in grade and much lower in all respects than the commercial animal.

On page 10, I have shown the eastern first class, the eastern fourth-class rates, the eastern cattle rate, and the percentage which the fourth-class rate is of the cattle rate. It will be shown there that in the eastern territory on horses for slaughter, the traffic moves on a basis 163½ per cent of the cattle rate. That is to be contrasted with the proposal of our friends on the other side in this case, that the rates on the commercial horses and mules should be not to exceed 110 per cent of the cattle rate in this territory.

On page 11, I show the western cattle rates as prescribed in 17000, Part 9; 45 per cent of first class in Zones I, II, and III, and the percentage which column 45 is of the western cattle rates. You will find the figures as indicated at the bottom of the page and, for Zone I, shows a percent-
[fol. 1132] age of 150; Zone II, 167½; and, Zone III, 179. I think an examination of this page shows that the proposal of the western lines is not far out of line with that action which was taken by the commission in the eastern territory in the prescription of the rates on these commodities.

On page 12, I have taken the proposal of the western lines of column 45 of Zones I, II, and III with the eastern second and fourth-class rates and the percentage. The results are those shown at the bottom of the page. The total mileage used is 600 miles.

That is to be contrasted with the class-rate relationships, to which previous mention has been made in previous ex-

hibits. This indicates, I think, quite clearly that the proposal of the western lines is certainly not out of line with what actually prevails in eastern territory.

On page 13, I show the western cattle rates and 115 per cent thereof as compared with the eastern second and fourth-class rates and percentage. This indicates that, as a general average, for 600 miles, that 115 per cent of the cattle rates is only 49½ per cent of eastern second class and 76½ per cent of eastern fourth class. This, again, I think, indicates clearly that so far as the transportation of these commodities is concerned, the western lines have not been able to secure their proper revenue.

On page 14, I show the scale prescribed by the commis- [fol. 1133] sion in the South on horses and mules, single line and joint line, and the southern cattle rates, and the percentage thereof. This indicates that the rates prescribed in the South on horses and mules are of the southern cattle rates, respectively single line, 135.6 per cent; and joint line, 148.1 per cent. This again indicates that certainly a basis of 115 per cent of a depressed cattle rate is hardly proper for application in this territory.

On page 15, I show the rates prescribed by the commission in the South on horses and mules and the southern first class, and that shows, respectively, single line, 43, and, joint line, 47 per cent, which is certainly not far wrong from the proposal of the western lines in this case of 45 per cent of first class.

The statement was made yesterday, I believe, that in so far as South Dakota is concerned, that a great amount of livestock has been taken away from the carriers and handled by truck. I won't attempt to give the exact wording of that statement, but the record is clear as to what was said.

Attention is called to page 1 of Exhibit C-302, which shows that for the years 1930 and 1931 there was an increase of horses and mules originating in that State from 715 cars to 838 cars; and, on cattle, 6,502 to 7,009; and, on hogs, 7,433 to 8,419; and, on sheep, 1,264 to 1,563.

Those figures are for the last 2 years.

I realize that there is considerable of this traffic that [fol. 1134] is trucked, and it is a situation which is being given very careful consideration by the carriers in this and other territories; but I think this statement does indicate that so far as the transportation by rail is concerned,

there has not been that very large transfer from rail to truck as was indicated in the testimony of yesterday by the witness of the South Dakota commission.

(Exhibits C-301, 302, 303, 304, Witness Flansburg, were duly received in evidence.)

Cross-examination.

By Mr. Ross:

Page 10, Exhibit C-302, on horses and mules on the Chicago and Northwestern Railroad, for the calendar year 1930, Nebraska intrastate traffic, average car haul 224 miles, total cars handles in the State, 148. For 224 miles Zone III rates would mean an increase of 3 cents and Zone II would mean an increase of one cent, so that these new rates as proposed would to some extent increase the revenues as applied to a movement under these new rates and the original proposed rates. That is brought about by the fact that the arbitrary percentages between Zones I, II and III and the rates that were actually prescribed are greater than the carriers proposed in the western trunk line class rate case.

You could not compile a scale on a movement from Zone III to the Missouri River because it would vary according to the mileage in each Zone. The rate basis would be Zone II all the way through plus an arbitrary for the distance in Zone III and that changes every five miles in Zone III. [fol. 1135] The commission has found in 13273 that horses and mules should take 115 per cent of the cattle rate, but don't overlook the fact that in 13273 the commission did not, in prescribing those rates, prescribe them as reasonable maximum rates. And, furthermore, in Ex Parte 103 they suggested that the carriers get busy and endeavor to secure additional revenue on such articles as can properly stand it. I don't think the increase of rates on horses and mules, for instance, in Nebraska, would act to stimulate traffic by rail or drive it to the trucks. If the condition develops so that this or any other traffic begins to move by truck, it is within the power of carriers to take such action as may be necessary to protect their interests.

I think my Exhibit C-304 shows a lower percentage on damage claims on horses and mules than that shown by Mr. Christianson in his Exhibit presented at this hearing.

O. H. TIMM, called as a witness and being duly sworn, testified as follows:

Direct examination (pro se):

I am commerce assistant for the Chicago, Milwaukee, St. Paul and Pacific Railroad; headquarters, Chicago, Illinois.

I testified in the previous hearing at Kansas City on October 1, 1928, and introduced Exhibits C-281 to C-287, inclusive; and I have brought these exhibits up to date and introduce them at this time. In addition to these exhibits, I have two supplementary exhibits, consisting of 1 page each, which I desire to introduce at this time.

[fol. 1136] The Milwaukee Road is a defendant in the proceeding known as Docket 12268, having to do with rates on horses and mules from South Dakota to destinations in western trunk-line territory; and, in that connection, I adopt and concur in the testimony presented by Mr. Flansburg dealing with the history and other data in connection with the adjustment on horses and mules within that territory and from and to other territories including Nebraska.

However, we are not a party to the Nebraska case. The Milwaukee Road does not serve Nebraska other than we handle traffic to and from Omaha, Nebr., or on joint traffic coming form or destined to Nebraska.

My Exhibit C-305 has been brought up to date.

Pages 3-a and continuing on the other sheet show the new basis proposed by the South Dakota carriers to the territory east thereof, and shows the 45 per cent of first class prescribed by the commission in the 17000, Part 2, decision. The previous exhibit, corresponding pages, showed 45 per cent of western trunk lines' proposal for western trunk-line territory.

Page 4-A has been brought up to date, showing the number of cars, number of tons, and average tons per car on horses and mules and other traffic, in connection with which data has been prepared and contained in the exhibits that follow C-305.

[fol. 1137] Page No. 7-A shows the traffic density brought up to date for the years 1930 and 1931, South Dakota versus Minnesota, Iowa, and Wisconsin.

Page 8-A shows similar information with respect to States in the northwest and western region.

Page No. 9 has been revised and is in a different form from what was contained on the old sheet 9. The densities shown on this page are taken from Statement 28105, I. C. C. Bureau of Statistics.

With respect to the density in the western trunk-line column following or showing the density for the State of North Dakota, and also for the State of Ohio for account of central and eastern trunk-line territory, the dollar sign should be taken off.

Pages 10-A and 10-A continued have been brought up to date for account of the years 1928 to 1931, inclusive, the last page dealing with the first 3 months of 1932. This shows the operating revenues and expenses and other data for account of the Milwaukee Railroad, and is supplemented by the data introduced this morning by Mr. Wettling for account of all western trunk-line carriers.

Now, dealing with Exhibits C-306 to C-310, inclusive:

In the former proceeding the Milwaukee Road was detailed to present this testimony with respect to the revenues on horses and mules on the basis then in effect and what we propose for application for the future, and what [fol. 1138] the revenues were on other traffic, the movement of which is contained in Exhibit C-305.

These several pages contained in these exhibits have been brought up to date in its entirety with respect to all of the commodities shown. I mention that because on some of the commodities there have been no changes in the rates, such as with respect to lumber, petroleum products, and, in one or two instances, on wheat or corn. There has also been no change in the rates on cement.

The revenues per car and per car-mile under the new revised figures are based on the average loading of the Milwaukee System for the year 1931. The previous figures were on basis of the 1927 loading.

Since the first hearing the commission has rendered its decision in the class case, 17000, Part 2, 164 I. C. C. 1, and has treated some of the commodities referred to in these exhibits. With the beginning of the effective date of those rates, December 3, 1931, eggs and butter have been related to first class, 60 per cent thereof; canned goods, 35 per cent of first; iron and steel, 32½ per cent of first; and, agricultural implements, 40 per cent of first.

There have also been some changes with respect to the

adjustment on automobiles. In 1928 the basis for automobiles was first class. With respect to some of the rates shown in these several exhibits, automobiles have been [fol. 1139] given commodity rates, and so indicated on this exhibit.

Throughout where we have shown commodity rates, the effective date is shown as on June 10, 1932. This is an error and should read, "Effective May 10, 1932." That correction should be made wherever the exhibits show June 10.

Since the first hearing, there have also been established in a few cases commodity rates on sugar slightly less than the fifth-class rate.

The rates on automobiles were established to meet truck competition.

With respect to Exhibit C-311, consisting of 5 pages, this deals with the adjustment on horses and mules from representative points in South Dakota to Chicago, Sioux City, St. Paul, Omaha, and Kansas City, Mo., showing the present rates on horses and mules and also the proposed rates referenced "A" and "B," respectively; and these rates have been contrasted with the rates on horses and mules from Chicago and St. Louis to points in central and trunk-line territory for hauls equi-distant.

The distances from South Dakota to Chicago have been figured via the single-line routes. As an example, from Yankton to Chicago, the Chicago & North Western is short, 569 miles. From Mitchell, S. Dak., the distance is 612 miles, via the Milwaukee Railroad. Both of these towns are served by lines other than the Milwaukee Road.

[fol. 1140] In connection with some of the studies that I have made on horses and mules, we find that there is a substantial movement from the West to Chicago and St. Louis and also shipments to Galesburg, Ill. Chicago and St. Louis are important horse and mule markets, and Galesburg, Ill., is also quite an important market, being developed in recent years.

From these markets horses are shipped into official classification territory. I have taken a few figures from the commission's Statement No. 31100 for the year ended December 31, 1930. During this year there were shipped 37,755 cars of horses and mules throughout the United States. The greater portion of these originated in the

central western region, 12,152 cars. Next in rank is the northwestern region, with 9,842 cars; third in rank is the southwestern territory, then the southern region, Great Lakes region, central eastern region, the New England region, and the Pocahontas region—eight regions in all.

Terminating, in rank, is the central western region, next in line is the northwestern region, and third in line is the southern region. The southwestern region is fourth. In other words, the southwestern region is third as to originating of horses and mules and fourth as to total cars terminating.

These figures are presented because of the adjustment that prevails in official classification territory. Between the basis applicable on horses and mules, ponies, colts, stallions, jennies, and jacks, in central freight association [fol. 1141] territory, also in trunk-line territory, and between these territories, is second-class rate published in Agent Jones' I. C. C. 2506.

The minimum is 23,000 pounds for cars 36 feet 7 inches and under, and there is a sliding increase on cars of greater length, beginning with 24,380 pounds and ending with 26,910 pounds for cars over 40 feet 6 inches in length. The proposal for account of western trunk-line and also the southwestern lines between these territories and between one territory and the other is 23,000 pounds—a flat minimum regardless of length or size of car.

On my Exhibit C-312, I have made a brief analysis of the data contained in my Exhibits C-306 to C-310, inclusive, showing the present rates on horses and mules, and what the carriers proposed in the previous hearing, and what we are proposing today, together with the average rate, and the per cent increase of the present rates under both proposals.

It should be noted here that my study included 10 origin points with respect to the study made to Chicago, Sioux City, and Omaha, and I only selected five points so far as St. Paul and Kansas City are concerned. The exhibit shows further that the per cent of increase is somewhat lower under the present proposal than under the proposal of October 1, 1938.

There is slight error on this exhibit with respect to the two proposals from Lemmon, S. Dak., to Chicago, Ill. The rate shown under "Proposal, October 1, 1928," is $1.10 and

[fol. 1142] should read $1:13, making the average rate 92 cents; and no change in the per cent of increase.

The correction with respect to the present proposal should be as follows: From Lemmon to Chicago, 97 cents instead of 66½, making the average rate 85.6, and increasing the percentage over the present rates from 44.8 to 57.4.

Exhibit, C-313, shows the adjustment from St. Louis and Chicago to central and eastern trunk-line territory.

The basis on horses and mules in official territory generally is second class. There are a few exceptions to this basis in that there are commodity rates from St. Louis and Chicago to base points in eastern trunk-line territory and to the western boundary of eastern termini, such as Pittsburg and Buffalo.

The second class in eastern territory fixed by the commission in 15879 is 85 per cent of first class. From and to such points where there are commodity rates, I have shown what the percentage relationship is to first class. The range with respect to the points shown from St. Louis is from 63.1 to 72.8 per cent of first class; and, with respect to the adjustment from Chicago, the range is from 64.7 to 74.1 per cent of first class.

These are the same points that were used in comparison with the rates from South Dakota to the several markets and as shown in my Exhibits 306 to 310, inclusive.

Something was said yesterday about the livestock traffic being driven to trucks. I want to refer the commission to [fol. 1143] the movement of the Milwaukee Railroad for the last 3 years. In 1929 we handled 55,203 cars of cattle; in 1930, 50,390, and, in 1931, 48,937 cars.

Calves, in double-deck cars: In 1929 there were 532 cars; in 1930, 572 cars; and, 1931, 355 cars—a slight reduction.

Sheep and goats, in double-deck cars: In 1929 we handled 4,312 cars; in 1930 we handled 6,263 cars; and, in 1931, 7,161 cars. There was an increase of approximately 2,000 cars, 1930 over 1929, and approximately 900 cars increase, 1931 over 1930. These are the smaller animals, sheep and goats, and are frequently transported by trucks to some of the markets in this territory.

Hogs in single-deck cars: We handled in 1929, 61,630 cars; in 1930, 53,675 cars; and, in 1931, 48,304 cars. There is a decrease, 1931 versus 1929, of approximately 12,000 cars.

Hogs in double-deck cars: In 1929 we handled 15,553 cars; in 1930, 16,114 cars—approximately 1,000 cars increase. And in 1931 we handled 20,096 cars—an increase of over 4,000 cars, 1931 versus 1930.

This shows that there was an increase in shipments via our line in the smaller animals, and I would say that the reduction on the other traffic reflects the carloadings of other traffic generally.

The Milwaukee Road has a system of lines between Chicago and Lake Michigan to the Missouri River, Kansas [fol. 1144] City, Omaha, Sioux City, and the Twin Cities, and a transcontinental lines to the Pacific Coast. Our average haul for the year 1931 of horses and mules was 436 miles.

Having in mind that we serve the eastern States in western trunk-line territory, Illinois, Iowa, Minnesota, and Wisconsin, it would indicate that we have handled shipments from this territory to destinations in central territory based on the horse and mule commodity rates, which are not related in any way to cattle, plus the second-class rates from Chicago or the Mississippi River. And in my investigation in connection with some of the cases that I have handled involving horses and mules, we found that there was a substantial movement of horses to destinations in central territory in addition to the movement to Chicago, Galesburg, and St. Louis, and there is also a frequent movement to inland points.

Something has been mentioned here in regard to the adjustment on horses for slaughter. In this connection, I only mention that figures have been introduced here regarding the claim payments on horses and mules. The carriers, in publishing the cattle basis on horses for slaughter purposes only, do not, by agreement, entertain any claims on horses or mules. This is more or less due to the character of the animals; they are of low grade and do not stand the wear and tear of handling, contrasted with the commercial horses.

On page 1 of Exhibit C 306, the last item, the per-car-mile [fol. 1145] revenue on automobiles from Chicago to Yankton, S. Dak. should read "27.6" instead of "55.2."

(Exhibits Nos. C-305 to C-313, inclusive, Witness Timm, were received in evidence.)

Cross-examination.

By Mr. Ross:

The figures for the movement on horses and mules for 1929 was 3,815 cars; 1930, 3,662 cars; 1931, 3,305 cars.

On the commodities shown on page 4A of Exhibit 305, there is a slight fluctuation in tonnage, one year over another.

To meet the truck situation on livestock our line has made similar changes as other carriers.

The southwestern region terminated less cars than they originated but handled more. The central west and northwestern regions terminated more than they originated.

M. J. DOWLIN, called as a witness and being duly sworn, testified as follows:

Direct examination.

By Mr. Thompson:

I am with the C., R. I. & G. and C., R. I. & P. Rock Island Lines and have previously testified in this proceeding.

In the previous hearing I submitted some figures regarding population, based on the 1920 United States census. I now desire to bring that up to date by submitting some [fol. 1146] data based on the United States census of 1930.

Exhibits Nos. C-314, C-315, and C-316 are maps of the States of Texas, New Mexico, and Arizona.

On the Texas map, Exhibit No. C-314, I have indicated by a heavy line drawn from a point just west of Higgins on the P. & S. F. Railway, in Lipscomb County, in a generally southeasterly direction to a point just west of Corpus Christi, in Neuces County, on the Gulf of Mexico, approximately the dividing line between common-point and differential territories, as outlined in Item No. 1000-B, Supplement No. 11 to Texas Lines' Tariff No. 2-L, A. C. Fond's I. C. C. No. 296.

This line conforms very closely to the differential line prescribed by the Interstate Commerce Commission in its order in the Consolidated Southwestern Cases, 123 I. C. C. 207, of April 5, 1927. It also follows very closely the differ-

ential line fixed in the Shreveport case, Docket 8418, although not exactly. For example, in the Shreveport case, the line of the P. & S. F. west of Canyon to Farwell, inclusive, was designated as common-point territory, while the portion of the P. & S. F. west of Canyon was excluded by report in the Consolidated Southwestern Cases above referred to. This line also substantially conforms to the present boundary line between common point and differential territory in Texas as to the rates on horses and mules.

The density of population and the volume of traffic in Texas west of the differential line just described are lighter than that section of the State east thereof.

The entire States of New Mexico and Arizona are very [fol. 1147] similar to West Texas, although the population is less dense; and local traffic—that is, traffic other than overhead traffic—to and from points in New Mexico is even lighter, generally speaking, than in west Texas differential territory.

Reverting back to the Texas situation: The differential line just discussed is a general division between Texas common-point and differential territories, but there are some sections situated east of that line in which differentials are applicable. Among the most important, for example, are:

The line of the F. W. & D. C. west of Estelline, exclusive of Plainview and Lubbock; the line of the P. & S. F. east of Lubbock to Crosbyton, inclusive, east of Plainview to Floydada, inclusive, and east of Heaton to Allison, inclusive.

Item No. 1000-B of Texas Lines' Tariff No. 2-L, A. C. Fonda's I. C. C. No. 296, defines in detail the divisions just discussed.

On the whole, the volume of traffic originating at and destined to points in west Texas differential territory and the States of Arizona and New Mexico is much less than that originating at and destined to points in the section of Texas east of the differential line.

Exhibit No. C-317 is a statement consisting of 7 pages, a statement showing the area in square miles, the total population, and the average population per square mile in each county in the State of Texas.

[fol. 1148] On account of the fact that in many counties

of the State railroads traversing the counties are authorized to take differentials into consideration on only a portion of their lines in such counties, I found it somewhat difficult to segregate the data shown hereon as between common-point and differential territory. For example, take Potter County, in which the city of Amarillo is situated. Only about 30 miles of railroad within that county are in common-point territory.

I, therefore, made three segregations of these counties. Under the heading "Mixed Counties" are shown the counties where a portion of the railroad mileage therein is in common-point territory and a portion in differential territory. There are 18 such counties, comprising an area of 17,687 square miles, with a population of 636,426.

Under the heading "Differential Counties" are shown the Texas counties in which the railroad mileage in such counties is exclusively differential lines. This area comprises 116,788 square miles, with a population of 804,428.

Under the heading "Common-Point Counties," I have listed the remaining counties of the State of Texas, 153 in number, with an area of 127,923 square miles, and a population of 4,380,418. Under this segregation, the population in Texas common-point territory averages 34.2 persons per square mile.

It will be noted under this segregation that the density of population per square mile in the mixed counties aver-
[fol. 1149] ages more than in common-point territory.
This is explained by the fact that there are a number of populous cities located in the counties which I have listed as mixed counties.

For example, Potter County, in which is situated the city of Amarillo, with a population of 43,132; Bexar County, in which is situated the city of San Antonio, with a population of 231,542; Nueces County, in which is situated Corpus Christi, with a population of 27,741; and Tom Green County, in which is located the city of San Angelo, with a population of 25,308 The foregoing population figures are taken from the Texas Almanac of 1931.

If the population of the above-named cities were deducted from the total population of the counties in which they are situated, the average population per square mile of the mixed counties would be reduced to 17.9 persons.

This exhibit further shows that common-point territory

comprises 48.7 per cent of the area of the State but has 75.3 per cent of the total population; while the combined mixed and differential counties, comprising 51.3 per cent of the total area, have only 24.7 per cent of the population. The population figures are taken from the Texas Almanac for 1931, for these four cities and the population of the counties was taken from the Rand-McNally atlas.

Exhibit C 318, is a tabulation segregating Texas counties immediately west of and adjacent to the differential line, [fol. 1150] and shows that in these counties the average population per square mile corresponds, as a whole, with that of Texas differential territory, and that the decline in density of population at or adjacent to the differential line is very precipitous.

Exhibit C-319, consisting of 2 pages, is a tabulation of the population by counties of the states of New Mexico and Arizona. The average population per square mile is 3.5 persons, or 3.7 persons less per square mile than the average of Texas differential counties as a whole.

At the former hearing in this proceeding I submitted a statement relative to loss-and-damage claim payments on livestock. I have brought that down to date by securing the additional data from the lines which are shown on the exhibit. I desire to submit in statement form this statement, consisting of 5 pages, as Exhibit No. C-320.

This exhibit is a statement of loss-and-damage claim payments made by the Rock Island, Southern Pacific Company (Pacific Lines); Texas & Pacific Railway, and the St. Louis Southwestern Railway Company of Texas, and shows the information indicated at the heading of columns 2 to 10, inclusive, for the periods indicated in column 1.

On page No. 5 is the summary of the figures of the different roads shown. The per cents in columns 8, 9, and 10 are calculated separately and in the aggregate from the [fol. 1151] figures in columns 2 and 7, inclusive, and, therefore can be checked for their accuracy.

I should like to call attention to the figures shown at the bottom of page 5 in columns 9, 10 and 11, indicating that the ratio of loss-and-damage-claim payments to revenue earned on horses and mules is 5.49 per cent; on livestock other than horses and mules, 2.41 per cent; while the ratio of loss-and-damage-claim payments to revenue earned on all freight except all livestock is, .92 per cent, showing that

the ratio of loss-and-damage-claim payments on livestock, particular on horses and mules to revenue earned on that traffic is materially greater than the ratio of loss-and-damage-claim payments to revenue earned on all other traffic.

Exhibit No. C-321, consisting of 1 page, is a similar statement for the Missouri-Kansas-Texas Railroad Company of Texas, except that horses and mules in this statement are not segregated from other livestock.

On this exhibit the ratio of loss-and-damage-claim payments to revenue earned is shown for all livestock, the figures being 4.9 per cent, while on all carload freight except livestock the per cent of loss-and-damage-claim payments amounted to .71.

Exhibit No. C-322, consisting of 1 page, is a statement showing the loss-and-damage-claim payments per car on the Rocks Island, Texas & pacific Railway, and Southern Pacific Company (Pacific Lines) for the periods shown in [fol. 1152] column 1, the period covered for the Rock Island being 8 years; T. & P., 10 years; and, Southern Pacific, 12 years—aggregating 30 years.

(Exhibits Nos. C-314 to C-322, both inclusive, Witness Dowlin, were received in evidence.)

Cross-examination.

By Mr. Ross:

I cannot give you a statement of the loss and damage claims on fruits and vegetables.

The loss and damage claim payments on peaches run high compared with other fruits and vegetables. I couldn't say whether it was higher than horses and mules.

Population is, to a certain degree, a barometer of traffic possibilities. I don't think the population should enter into the making of rates. It's the volume of traffic.

C. D. Bordelon, called as a witness, and, being duly sworn, testified as follows:

Direct examination.

By Mr. Thompson:

I am assistant general freight agent, Gulf Coast Lines, International-Great Northern Railroad. I represent the southern lines of the Missouri Pacific System.

My testimony will deal with present conditions in Texas differential territory. This is the portion of the Southwest from, to, and between which the rates on a large proportion of the traffic are higher than from, to, and between the Southwest generally. The commission in many cases has found that traffic and transportation conditions in that [fol. 1153] portion of the Southwest known as Texas differential territory are similar to conditions in New Mexico and Arizona.

The dividing line between common-point and differential territory, briefly stated, is described as follows: It passes just west of Amarillo and Lubbock, in the Panhandle country, west of Big Spring on the T. & P., west of San Angelo on the P. & S. F., west of San Antonio, and west and south of Ollem and Corpus Christi, the latter being a Gulf port situated about two-thirds of the way between Houston and Brownsville on the Mexican border.

In Examiner Simons' proposed report in this case, he reaches the qualified conclusion that differentials should not be allowed, saying that in differential territory the population per mile of railroad compares favorably with that in common-point territory; that there has been great increase in the number of farms, in agricultural tonnage, in the movement of fruits and vegetables from the Rio Grande Valley, and in the production of petroleum.

The figures cited in the proposed report are from 5 to 8 years old, and there has been a marked change in some of these conditions in differential territory, especially in the production of petroleum. I will deal with these findings of the examiner in an exhibit to be introduced shortly, except as to petroleum production.

The State of Texas contains 262,398 square miles. It is [fol. 1154] larger than the combined area of Louisiana, Arkansas, Oklahoma, and Kansas. Common-point territory is almost as large as the combined area of Louisiana, Arkansas, and Oklahoma. Differential territory is almost as large as common-point territory in Texas. That is to say, the State of Texas is about one-half in common-point territory and one-half in differential territory.

In the division of the State as between common-point and differential territory, I have assigned to differential territory all of the counties located wholly west of the differential line, also all counties divided by the line but having the

preponderance of railroad mileage west of said line. The common-point counties are those east of the differential line, also counties divided by the line but having the preponderance of railroad mileage east of said line.

Exhibit No. C-323, consisting of 5 pages, captioned "Comparison of Texas Differential Territory with Texas Common-Point Territory and Florida Differential Territory."

The common-point area of Texas makes up 51.58 per cent of the State, the remainder, or 48.42 per cent, being in differential territory. As to Florida differential territory, shown in the third column, this makes up almost three-fourths of the State's area. Information as to Florida has been shown for the reason that the commission in its various decisions either declined to prescribe through rates to [fol. 1155] and from that part of the State or provide for a higher level than it prescribed to, from, and between southern territory.

The figures as to population per square mile for the three areas is shown in the fifth line of figures. Common-point territory density of population is over four times that of Texas differential territory, and Florida differential territory is three times greater than Texas differential territory. While the area of Texas differential territory is nearly 50 per cent of the State, it contains less than 18 per cent of the population.

In Examiner Simons' proposed report, he lends weight to the showing made in the original proceeding about the population per mile of railroad in differential territory. It is believed that consideration should also be given to the square miles per mile of railroad, because naturally if there were only 500 people in the entire Texas differential territory and but 1 mile of railroad, the population would be 500 per mile of railroad.

On the other hand, by taking the square miles per mile of railroad, there are over 32 square miles per mile of railroad in differential territory, 8.6 in Florida, and 10.5 in common-point territory.

Another reason why the population per mile of railroad is not a true index is that in the allocation of the border counties through which the differential line passes, we have as- [fol. 1156] signed to differential territory Potter County, containing the city of Amarillo; Lubbock County, in which

the city of Lubbock is located; Tom Green County, containing the city of San Angelo; Nueces County, containing the city of Corpus Christi. These four counties contain nearly 200,000 people or about 20 per cent of the total population in differential territory. If these counties should be deducted, the population would be only about 200 persons per mile of railroad, instead of 263. The principal cities in those counties take common-point rates.

Reference has also been made to the large increase in population in differential territory. It is easy to become misled by regarding only the percentage of increase; and, for that reason, I wish to present the commission with certain additional facts, and now refer you to page 5 of the exhibit. This shows the population of Texas differential and common point territory from 1900 to 1930, the total population for each census, the population per square mile, and the total increase, and the increase per square mile, one census over the other.

For instance, the increase in differential territory, 1930 over 1920, was almost 80 per cent, but the number of persons per square mile increased from 1.2 to 3.7 persons. The total increase in differential territory in the 30-year period, 1900 to 1930, was 808,298 or 6.3 persons per square mile. In common point territory, an area of equal size, the increase was almost 2 million, or 14.5 persons per square [fol. 1157] mile. Stated differently, the increase in common-point territory was about two and one-half times greater than the increase in differential territory.

With particular reference to percentages of increase, the 1930 census shows that Bailey County, in differential territory, increased 903 per cent over 1920; yet the population per square mile is only 5 persons. Cochran County increased 2,829 per cent in the 10-year period, 1920 to 1930; yet there are less than 3 persons per square mile in that county. Crane County increased in population 5,902 per cent 1920 to 1930; but there are only 2½ persons per square mile in that county. Hockley County increased 6,686 per cent, but there are only 10.7 persons per square mile. Winkler County increased 8,275 per cent, but there are only 8 persons per square mile in that county, or less than the average for differential territory as a whole. So that percentages of increase should be considered along with the final result.

The population per square mile for other southwestern and adjacent States, based on the 1930 census, is as follows: Louisiana, 46.3 persons; Arkansas, 35.3; Oklahoma, 34.5; Missouri, 52.8; Kansas, 23; Arizona, 3.8; and New Mexico, 3.5.

The population for Texas as a whole is 22.2; differential territory, 8.2 persons; and, common point, 35.3 persons.

Reference is also made to the increase in the number of farms. The exhibit being discussed shows the area in [fol. 1158] farms and the area in crop lands. Careful distinction should be made between land classified as farm land and that designated as crop land.

According to the U. S. Census of Agriculture, a farm, for census purposes, is all the land which is directly farmed by one person, either by his own labor or with assistance. A farm may consist of a single tract of land or of a number of separate tracts. The term "farm" does not mean that all of the land is given to raising crops. The term "farm land" includes large areas not actually under cultivation and some not even used for pasture.

Land given to raising agricultural products is classified as crop land, and from the exhibit under discussion you will find that while over 30 per cent of the common-point area is classified as crop lands, only 10.25 per cent is so used in Texas differential territory. This is because of the rugged condition of a very large part of that section and the lack of rainfall.

Note that in Florida only 3.69 per cent of the total area is devoted to crops, but that the crop values per square mile of total area is $1,844, or $700 more per square mile than in Texas differential territory.

Texas is the leading agricultural State of the Union. It is first in the production of cattle, cotton, mohair, and wool. The value of crops per square mile in common-point terri- [fol. 1159] tory is three times greater than that in Texas differential territory, which, in turn, is $700 less per square mile than the value of crops produced in Florida differential territory.

Texas differential territory produces less than one-third of the cotton produced in the area east thereof, about one-sixth of the potatoes, one-ninth of the corn, one-fifth of the hay and less than one-tenth of the oats. Bear in mind that the area of differential territory is about the same as common-point territory in Texas.

The horse and mule population in Texas differential territory is less than one-third that of common-point territory; cattle, about 50 per cent. The value of all livestock is about one-half; the number of swine, one-fifth; and the value of livestock products, about one-fourth.

On page 3 of the exhibit we have shown other data contrasting the conditions as between Texas common-point and differential territory and Florida differential territory. The postal receipts per square mile are four times greater in common-point than in differential territory; savings deposits, seven times greater; number of residence telephones, almost six times greater; the value of manufactured products, about eleven times more.

In the comparisons beginning with the wholesale outlets, 1929 down to the end of the page, we have made comparisons by showing the square mile per unit. Thus, in [fol. 1160] common-point territory, there is one wholesale establishment for every 17,68 square miles; in differential territory, for every 65 square miles.

The statement shows the wholesale net sales, country general stores, restaurants, filling stations, and other comparisons. Note, for instance, that there is one filling station for every 77 square miles in differential territory and for every 19 miles in common-point territory.

The conditions disclosed by this exhibit reflect themselves in traffic handled by the railroad, represented in the item of revenue ton-miles per mile of line. There are no recent data available showing traffic density by sections of States as a whole. The latest authentic document is the commission's Statement No. 28105 showing traffic density by States and other geographical divisions for the calendar year 1927. This statement shows that the traffic density in Texas common-point territory is 1,061,758, and, in differential territory, 798,356, or a little over 78 per cent of the density in common-point territory.

When I mention the figures as to traffic density, it, of course, means revenue ton-miles per mile of line, based on the class I roads. The traffic density in southwestern territory, as a whole is 58,09 per cent of the traffic density in southern territory. Traffic density for the Missouri Pacific Lines, except the International-Great Northern, in 1927, was 238,818, excluding sand and gravel, or a little [fol. 1161] more than 20 per cent of the density in Texas

common-point territory. Including sand and gravel, the density in differential territory was 324,380 and in common-point territory 936,336.

For the International-Great Northern in differential territory the density was 259,837, excluding sand and gravel, and 283,602 including that commodity; in common point territory the density was 811,750, excluding sand and gravel, and 863,844, including it.

In 1927 the traffic density on the Southern Pacific Lines in differential territory was 302,633 on the originated and terminated traffic. Intermediate or overhead traffic was 995,821. In common-point territory the originated and terminated traffic was 567,731, and the intermediate or overhead traffic 191,493. On the Texas-Mexican Railway, which is an important line in differential territory, extending from Laredo, Tex., to Corpus Christi, the traffic density in 1928 was 270,281, on all traffic. Excluding overhead traffic, sand, gravel and crushed stone the traffic density was only 106,072.

In 1928 the traffic density on the St. Louis, Brownsville & Mexico Railway, the Rio Grande City Railway, and the San Benito & Rio Grande Valley Railway, all in differential territory, serving the lower Rio Grande Valley, was 240,685, excluding sand and gravel, and 388,715 including it. The density on the San Antonio, Uvalde & Gulf Railroad, Asherton & Gulf Railway, San Antonio Southern Railway and International-Great Northern Lines in differential terri-
[fol. 1162] tory, serving the Laredo-Winter Garden district, was 160,831, excluding sand and gravel, and 251,177, including it. The corresponding figures for the Missouri Pacific Lines in common point territory are 823,307 and 910,182. The traffic density for all the Missouri Pacific lines in Louisiana and Texas, including the lines in differential territory, for 1928 was 733,383. The segregation in the figures excluding sand, gravel and crushed stone tonnage were made because for the years shown there was a heavy movement of those commodities for road building purposes, and since the good roads have been completed we are handling a very small proportion of sand and gravel, and the total figures including that tonnage were not considered representative of normal conditions.

There has been a substantial increase in the movement of fruits and vegetables from the Rio Grande Valley.

Fruits and vegetables make up nearly 68 per cent of the tonnage moving northbound on the St. L. B. & M. Railway; the other important commodities being cottonseed and cotton. On the S. A. U. & G. Railroad they make up 18 per cent of the northbound tonnage; on the S. B. & R. G. V. approximately 45 per cent; on the I.-G. N. 31,78 per cent. This traffic is of great importance to these lines. Although this makes up the preponderance of the tonnage, the traffic density is still very light, and differentials or relatively higher rates are of material concern to these carriers.

[fol. 1163] There are certain spots in Texas differential territory that are highly developed and very productive, but on the whole it is a semiarid, desert country.

There has not been any development of any great importance on the so-called Southern Pacific lines that lies in differential territory west of San Antonio and extending to and including El Paso It serves an irrigated system right in the vicinity of El Paso; otherwise there is practically no development of any material consequence on that line.

In Ex parte 87, decided in 1926, the commission stated that it is the right and the duty of the carriers to take steps necessary to correct improper rate relations as they may be found to exist and to supply deficiencies in revenue by initiating suitable changes in rates. In the grain cases Commissioner Eastman made a somewhat similar statement, and in the 15 Per Cent case, 1931, the commission said that carriers could probably secure increased revenue on some commodities by reducing the rates on some and increasing the rates on others, and that it is not at all unlikely that there are a considerable number of rates which can reasonably be advanced substantially, even under present conditions.

The right and ability of the southwestern lines to initiate rate changes is being gradually taken away from them, and today over 63 per cent of their originated tonnage is subjected to maximum rate orders of the Interstate Com- [fol. 1164] merce Commission, and 20 per cent of their originated tonnage is in the course of being provided with maximum rates by this commission. So that within the near future about 83 or 84 per cent of the southwestern lines' originated tonnage will be frozen by maximum rate

orders. This means that although the carriers will still have the right to initiate reductions in their rates, and many such reductions have been made below the maximum measure fixed by the commission, they are powerless to initiate one single advance in any amount whatsoever without being in contempt of the commission's orders.

Excluding the low-grade traffic, such as crude and fuel oil, sulphur and the like, the commission has already fixed or has in course of fixation maximum rates on over 97 per cent of the southwestern lines' originated tonnage. This leaves approximately 2½ to 3 per cent of their tonnage on which to initiate advances in rates.

Exhibit No. C 324 is captioned "Statement showing for lines in Southwestern Region traffic affected by proceedings in rate cases before the Interstate Commerce Commission, based on 1930 Movement.

Pages 2 and 3 show the commodities on which maximum rates have been fixed. This class of traffic is among the highest grade handled by the carriers. Page 2 and the upper part of page 3 include Docket 13535 commodities. I made a study some time ago of the character of the 13535 [fol. 1165] traffic, and found that while it constitutes only 14.9 per cent of the tons handled, such traffic yields 33.49 per cent of the freight revenue. Other manufactures and miscellaneous articles, exclusive of 13535 manufactures and miscellaneous, contribute 25.06 per cent of the tons handled and 25.58 per cent of the revenue. This shows that the highest grade of traffic handled by the southwestern lines is subjected to maximum rate orders.

The bottom of page 3 shows the percentages of the originated, terminated, and handled tons affected by maximum rate orders.

Even as to some of this traffic, carriers cannot initiate reductions in individual rates without reducing the entire rate structure, unless specific authority for such reductions is first obtained from the commission.

Pages 4 and 5 show the tonnage involved in pending proceedings and which will sooner or later be provided with maximum rates by the commission which the carriers will not be able to exceed but which they will be able to reduce and, in a considerable measure, forced by competitive influences to reduce.

Page 6 is a list of the commodities on which the rates

have not generally been fixed as maximum by the commission. This accounts for a total of 14,615,753 originated tons, of which 12,663,794 or 86.64 per cent consists of crude and fuel oil, posts, poles and piling, sulphur, and other [fol. 1166] commodities on which relatively low rates are in effect due to various causes.

Some of these commodities, too, have been subjected to maximum rate orders, but since the extent of such maximum rate orders is not as great as on other commodities, we have listed these under the free list for the purpose of making a fair showing.

If it will be assumed for a moment that no increases of any importance can be made on this low-grade graffic, and, therefore, we set this tonnage aside, and then make the computations appearing on pages 2 to 5, inclusive, we find that the commission has fixed or is fixing maximum rates on 97.52 per cent of the southwestern lines' originated tonnage. Included in this are the rates on horses and mules, being reviewed in this proceeding.

This statement is not in criticism of what has been and is being done but is an exposition of the facts confronting the southwestern lines.

(Exhibits Nos. C-323 and C-324, Witness Bordelon, were received in evidence.)

Cross-examination.

By Mr. Ross:

The number of telephones in any given section is an index as to the relative conditions in that section. The number of bank failures might have some bearing on whether or not a farmer could secure a loan to buy seeds.

On Exhibit C 324, the classification rating is shown merely for information. I think the population of a section has a great deal to do with the traffic possibilities. [fol. 1167] Class rates were designed to move all traffic. We depend upon tonnage for our revenue. If we don't have the population we don't have the traffic in differential territory.

Redirect examination.

By Mr. Thompson:

We have a much greater traffic density in common-point territory and the rest of the Southwest than in differential territory.

R. E. BRANDT, called as a witness and being duly sworn, testified as follows:

Direct examination.

By Mr. King:

I am employed in the office of the assistant freight traffic manager of the Santa Fe Railway at Topeka, Kansas.

Exhibit C-325 is a companion exhibit to C-246 bringing the movement of cars of horses and mules up to date for the years 1928 to 1931.

In this connection, I wish to point out that for the year 1931 the Santa Fe System had a total movement of 2,416 cars as compared to 12,652 cars in 1917, showing a continual falling off of traffic in horses and mules, carloads. I have no figures on the trucking movement of horses and mules.

Exhibit C-326, is a companion exhibit to C-247, showing additional information for the year 1931, also comparison of the year 1931 with 1917, which is in addition to the infor-
[fol. 1168] mation shown on Exhibit C-247.

Exhibit C-327 is a companion exhibit to C-248, and shows the loss-and-damage-claim payments on horses and mules, carloads, also other livestock, and a comparison with the loss-and-damage-claim payments on all carload freight traffic, for the years 1930 and 1931.

I wish to point out that the loss-and-damage-claim payments on horses and mules, carloads, for the year 1930 were 7.13 per cent of the loss-and-damage-claim payments to revenue earned, and, for the year 1931, 6.93 per cent.

Exhibit, No. C-328, is an exhibit setting out the first-class, second-class, and fourth-class rates prescribed by the Interstate Commerce Commission in official classification territory in Docket 15879; also first-class, second-class, and fourth-class rates prescribed in southwestern territory in

Docket 13535; also present rates, horses and mules, in the Southwest, as proposed in Docket 12358 for single-line and also joint-line movement.

Under column J, is set out the southwestern lines' proposed scale of rates on horses and mules in common-point territory. Under Column K, is shown the rates proposed by the examiner in the reopened I. C. C. Docket 12358.

I wish to compare these rates with those applicable on commercial horses in official classification territory, shown under Column C, which is the second-class rate. It will be [fol. 1169] noted that the rates proposed by the examiner are even lower than the fourth-class rates in official classification territory, which rates apply on horses for slaughter in official classification territory and from the Missouri River to that territory.

Under column L, is shown the per cent the southwestern lines' proposed scale of rates is of the second-class Docket 15879 rates. Under column M, is shown the percentage the examiner's proposed rates are of the second-class rates in official classification territory; and under column N, is shown the percentage the examiner's proposed rates are of the fourth-class rates in official classification territory.

It will be noted from this exhibit that the rates proposed by the examiner are considerably lower than the present rates applicable in official classification territory on both commercial horses and on horses for slaughter, the latter rates being prescribed by the commission in Docket 19693, 155 I. C. C. 183.

In connection with the examiner's proposed report in Docket 12358, at sheet 77 the information was set out as to the fourth section in connection with the rates proposed. In this connection it is the view of the southwestern lines that if the commission should prescribe a mileage scale of rates on horses and mules, then the commission should at the same time authorize wide-open relief in order that the carriers could comply with the publication of the scales of rates.

[fol. 1170] Q. (By Mr. King) You mean relief as far as the fourth section of the act is concerned?

A. Yes, sir.

(Exhibits C-325 to C-328, both inclusive, Witness Brandt, were received in evidence.)

Cross-examination.

By Mr. Ross:

The Witness: If a mileage scale is prescribed you can't assess the rates on the basis of the short-line mileage unless you have wide-open fourth section relief.

The Santa Fe have larger equipment than some of the other carriers. In the last few years over 50 per cent of our livestock equipment has been 40 foot cars.

Mr. Thompson: Before the next witness is called, I have two exhibits I want to offer in evidence.

These exhibits are offered in support of Exhibits C-269 and C-270, presented by witness R. G. Waggener at the last hearing. They are not cumulative of any evidence heretofore presented, but the purpose thereof is to supplement the cost study exhibits of Mr. Waggener just mentioned.

The exhibits, as noted on their face, were compiled from data taken from statistical reports issued by the commission; and I, therefore, take it that they call for no further authentication, and ask that they accordingly be received in evidence.

These exhibits were prepared by Mr. Waggener, and the [fol. 1170a] source of them is indicated at the bottom, and is subject to check from the commission's records, being taken from the commission's statistical reports.

The first of these exhibits is headed "Ratio of Direct Freight Operating Expenses to Total Freight Operating Expenses for Year 1927," which I ask be received as Exhibit C-329; and the other one, headed "Analysis of Operating Expenses for Year 1927, Freight Service Only," etc., I ask be received as Exhibit C-330.

Exam. Witters: They will be received, subject to verification from the Commission's records.

Mr. Ross: Mr. Examiner, some of these figures involve the roads operating in Nebraska, such as the Burlington and the Rock Island; and I want to object to the introduction of those figures unless we have the witness here to testify in connection with them.

(The examiner received the exhibits in evidence subject to check.)

W. T. Long, called as a witness and being duly sworn, testified as follows:

Direct examination.

By Mr. Thompson:

The Witness: I am superintendent of transportation, Texas & Pacific Railway. I prepared Exhibit C-331, showing the tonnage density on that part of the Texas & Pacific extending west of Fort Worth, known as the Rio Grande Division, and including that part of its line in differential territory in Texas, for the years 1928, 1929, 1930 and 1931, showing the information for the Rio Grande division by train districts, the territory, Big Spring to El Paso being shown separately from the territory, Fort Worth to Big Spring, and the territory from Big Spring to El Paso being in differential territory.

[fol. 1171] The present limits of the Rio Grande division of the Texas & Pacific extend from El Paso eastward to Fort Worth, not including the Lancaster yard. The change in limits of the Rio Grande division was made June 16, 1929, by executive order of the president of the Texas & Pacific Railway. The Lancaster yards and the Fort Worth switching district could be transferred by a simple executive order to the Rio Grande division, if deemed advisable, would not bring about any change in the cost of operating the Lancaster yards, and would simply be a transfer from one accounting district to the other.

Trains operated on the Rio Grande Division between Fort Worth and El Paso are made up and broken up in the Lancaster yards, and the cost of that operation is included in the costs of the Fort Worth division. To that extent the cost of operating the Rio Grande division is relieved of expenses it would otherwise incur.

Our Texas type locomotives, with tractive effort of 96,000 pounds, now operate from Texarkana through to El Paso. The engines known as the Santa Fe type, with 67,700 pounds of tractive effort, referred to on sheet 28 of the proposed report of Examiner Simons in these cases, are not now used in the territory between Big Spring and El Paso and have not been since September, 1929.

The Federal laws require that perishable livestock traffic, such as horses and mules be unloaded for feed, water and

rest each 28 hours unless the shipper signs a release, in which event the haul can be continued for 36 hours. As the [fol. 1172] length of haul increases, if it goes beyond the distance in which the movement can be completed within the prescribed time limit, we have to incur the cost of more than two terminal services. Ordinarily the original car will go through, but frequently the railroad that is handling the shipment at the time of unloading will substitute their own equipment rather than continue the use of a foreign car. It is my opinion that the cost per ton-mile for long-haul traffic, particularly livestock, does not tend to decrease as the length of haul increases.

(Exhibit C-331, Witness Long, was received in evidence.)

Cross-examination.

By Mr. Ross:

The service rendered the car of horses and mules mentioned by me in my direct examination wouldn't differ from the service rendered to a car of cattle moving between the same two points; the only difference might be at the stockyards at Fort Worth, switching to a different unloading point than the cattle, different pens.

G. A. Ryser, called as a witness and being duly sworn, testified as follows:

Direct examination.

By Mr. Thompson:

The Witness: I have testified previously in these proceedings, and gave my qualifications.

At the prior hearing in this proceeding there were presented exhibits showing the population, total and per square mile, for counties in Texas through which the Texas & Pacific and other lines operate, based upon the 1910 and 1920 census.

To bring this matter up to date and to show the situation as of the latest date possible, I have prepared Exhibit No. C-332, consisting of 3 pages, which shows the 1910, 1920, and 1930 population figures, total and per square mile, for

the counties on the Texas & Pacific Railway in Texas, segre-
[fol. 1173] gated as to counties in common-point territory and in differential territory, including Glasscock, Crane, and Andrews Counties.

The exhibit, I think, is self-explanatory, the explanation of lines being shown on the third page, except I do want to call attention to lines h, k, and l, compared with lines a, c, and e.

Exhibit No. C-333 consisting of 3 pages shows the population, total and per square mile, for counties in Texas differential territory through which the Texas & Pacific Railway operates, for the years 1920 and 1930; also similar information for the State of New Mexico. The total population and per square mile are also shown for various subdivisions.

Prior to the establishment of the 13535 rates, Big Spring, Tex., generally was the last point in Texas common-point territory on the Texas & Pacific Railway. On horses and mules, in I. and S. Docket No. 2389, 102 I. C. C. 87, this commission fixed differentials west of Big Spring, Tex. This point is located in Howard County; and, to make the most adverse showing possible to the carriers, I have included Howard and Martin Counties in our population per square mile figures for differential territory. Midland, Tex., in Midland County, is the last point in common-point territory under the 13535 decision.

On the Texas & Pacific Railway to-day, differential territory is reflected by the totals and per square mile population shown in line B. Line C includes the totals and popu-
[fol. 1174] lation per square mile for the differential counties in addition to Howard and Martin Counties, and line E shows the totals and figures per square mile excluding El Paso County. In line D we have eliminated the population of the city of El Paso, and have then shown the totals and population per square mile.

On the second page we have divided the State of New Mexico, and at the top have shown the eastern portion of New Mexico, which includes all territory lying east of the western boundary of the counties of Eddy, Chaves, De Baca, Guadalupe, San Miguel, Mora, and Colfax.

In line marked "Total, J" we have the totals and population per square mile in the New Mexico counties shown. In "Total, K," we have shown the totals and figures per

square mile for the counties just mentioned, combined with all of the counties in Texas shown in the first two blocks on page 1; and, in the line marked "Total, L," we have shown the totals and population figures per square mile for that portion of New Mexico just described and all of the counties in Texas shown on page 1.

On the lower half of page 2 and the top of page 3, we have prepared similar figures for those counties in New Mexico west of those shown on the upper half of page 2, and the totals and population figures per square mile for the entire State of New Mexico are shown in the line marked "Total, N." The totals and population per square mile for all of [fol. 1175] the counties shown in this exhibit are represented by the line marked "Total, P."

Exhibit No. C-334 consisting of 1 page shows the area in square miles of Arizona counties, with the 1920 and 1930 population, total and per square mile. This may also be contrasted with the combined figures shown on the previous exhibit.

At the prior hearing in this case, I offered an exhibit showing the number of horses and mules received and forwarded at points in Texas differential territory on the Texas & Pacific Railway, compared with the movement of other livestock.

Exhibit No. C-335, shows the carload shipments of horses and mules, as well as cattle, to and from points in differential territory, which is west of Big Spring, for the year 1931; and, on the second page, the movement of horses and mules, compared with cattle, for the years 1923 to 1931, inclusive.

This showing determines, of course, that there is little movement of horses and mules compared with livestock other than horses and mules to and from points in differential territory on the Texas & Pacific Railway.

At the prior hearing in these proceedings certain evidence was offered as to the amount of tonnage received and forwarded at points on the Texas & Pacific Railway, and special comment was made of the west Texas oil traffic on this line.

In order to bring the matter down to date and to prove our contention that the discovery of oil means only temporary traffic in so far as our experience is concerned, I offer [fol. 1176] Exhibit No. C-336, showing the movement of

carload traffic to and from points in differential territory west of Big Spring, Tex., for the years 1925, 1928, and 1931.

This exhibit shows first that the carload traffic to and from this territory is approximately the same to-day as in 1925 before the west Texas oil boom.

Later exhibits will prove the matter from a revenue standpoint.

Exhibit No. C-337 is a statement showing the number of pounds of less than carload traffic received and forwarded from the same stations as shown on the previous exhibit during the years 1925, 1928, and 1931.

In addition to suffering from the loss of the petroleum traffic in 1931, as compared with 1928, when moving in carload lots, the carriers also suffer in connection with the movement of less than carload traffic which is now being handled to a large extent by motor trucks. This statement shows that the number of pounds of less than carload traffic received or forwarded from the stations is less in 1931 than in the year 1925.

Exhibit No. C-338 shows for the years 1926 to 1931, inclusive, the freight charges accruing to all carriers on traffic originating at or destined to points in Texas differential territory west of Big Spring, Tex., on the Texas & Pacific Railway. The stations shown on this exhibit are the same [fol. 1177] as on the two prior exhibits.

Exhibit No. C-339 shows the number of cars and tons of products of agriculture, animals and products, crude petroleum oil, products of mines, products of forest, manufactures and miscellaneous; also all carload and less-than-carloads handled by the Texas & Pacific Railway during the years 1923 to 1931, inclusive.

The particular feature shown in this statement is the fact that during the year 1928 the Texas & Pacific handled 86,307 cars of crude petroleum; total weight, 3,021,601 tons. This represented 22.22 per cent of the total tonnage. The revenue thereon for the Texas & Pacific represented 26.30 per cent of the total freight revenue.

Our records show that in the first 8 months of 1928 there was shipped from refineries at Pecos, Pyote, Wickett, and Midland, Tex., points in differential territory, a total of 2,838 cars of refined petroleum and its products, and in the same period of 1929 a total of 10,250 cars, making the increase in the refined oil movement from these points in differential territory 7,412 cars.

In the same period and from refineries located at Colorado and Big Spring, the movement in 1928 amounted to 3,149 cars and, in 1929, 13,355 cars—an increase of 10,206 cars.

In other words, the increase has been greater in common-point territory than in differential territory. This does not [fol. 1178] include the movement from the common-point oil refineries located at points east of Colorado, Tex.

Reference has been made in other cases to the development of petroleum oil in the area between Big Spring and Pecos and the large tonnage that petroleum produces for the rail carriers.

It is the experience of the Texas & Pacific that the tonnage created by the development of an oil field is only temporary, and, while it may produce relatively large tonnage for a short period, it causes the carriers to provide facilities to handle the peak movement of such tonnage; but, due to the temporary nature, the carriers, while they are compelled to make additions to their facilities to take care of the maximum volume of traffic that may be offered, find that after a relatively short while this traffic disappears, either from the crude oil going to pipe lines or to the exhaustion of the oil pool, so that in a relatively short time the tonnage disappears and the density of traffic resumes a relationship to the density existing prior to the discovery of the petroleum oil.

As illustrating the experience of the Texas & Pacific, I will offer exhibits showing the effect of the oil development in the west Texas area on traffic of this line. Prior to 1927 there was no production of crude petroleum oil in the area west of Big Spring to Pecos, inclusive. In 1927 oil was discovered in Winkler County and in adjacent counties, and a movement of crude petroleum oil started during that year. [fol. 1179] Exhibit No. C-340 shows the movement of crude petroleum oil by cars over the Texas & Pacific Railway from the stations of Wickett, Pyote, and Monahans, Tex., which were the crude oil shipping stations that developed subsequent to the discovery of oil in the above area.

There was some movement from other stations, but this movement was relatively small and of short duration. As the pipe lines were bulit, of which there are approximately 10 serving the west Texas area, the oil produced in the area left the railroads and went to the pipe lines.

This statement shows that the first movement of oil from Wickett, Tex., was in May, 1927; from Pyote, in September of that year; from Monahans, in December. The movement increased during the first several months from each of these stations, reaching a maximum of 80,640 cars during the year 1928, which dwindled to 34,085 cars in 1929, 32,084 cars in 1930, 9,113 cars in 1931 and only 20 cars in 1932 up to the present time.

It is interesting to know that the Texas & Pacific handled during 1927 a total of 19,311 cars of crude petroleum oil; in 1928, 86,307 cars; in 1929, 41,305 cars; in 1930, 37,364 cars; and, in 1931, 51,439 cars, the movement from the three stations covered by the exhibit being the following per cents of the total movement over the Texas & Pacific for the respective years.

1927, 36.23 per cent; 1928, 93.54 per cent; 1929, 82.52 per cent; 1930, 89.88 per cent; 1931, 6.56 per cent.

[fol. 1180] It is also interesting to know that as a result of this oil development the average haul on the Texas & Pacific of crude petroleum oil in 1927 was 462 miles; 1928, 609 miles, 1929, 565 miles; 1930, 540 miles; and, 1931, 210 miles, the 1931 movement being from the east Texas field near Longview, Tex.

This exhibit fully substantiates our statement that the oil traffic is temporary in nature and that it very soon disappears, and, when this takes place, the density of traffic in the area involved reverts to a density approximating that in existence prior to the oil development.

It may be stated by some one that the traffic of the Texas & Pacific Railway was reduced by the completion of the Texas-New Mexico Railway, but our investigation develops to the contrary. Exhibit No. C-341 shows the tonnage and freight revenue of the Texas-New Mexico Railway for the years 1930 and 1931.

For an increase of the average mileage operated of 30.58 miles, tonnage has been reduced 129,038 tons, and the revenue has decreased $422,444.57.

The freight revenue for 1931 was $75,594.51. For the same period in 1932, it was $55,090.29 for the months January to April of each year.

The mileage operated in 1931 was 112.12. In 1932, it was 112.07.

Exhibit No. C-342 shows the number of carloads received and forwarded to and from stations on the Texas-New [fol. 1181] Mexico Railway for the years 1930 and 1931, separated as to a number of commodities, and in the last three columns, all carloads.

The exhibit clearly shows the tremendous reduction in tonnage received at points on the Texas-New Mexico, which, during the year 1930, consisted largely of traffic moving to and from an oil field. The movement in 1931 forwarded consisted mainly of casinghead gasoline and of oil-well supplies which moved from this field to points in the east Texas oil field.

At the previous hearing witness Pelton submitted certain figures with respect to the prosperity of lines operating in differential territory, but failed to show what portion of such lines was in differential territory, and the examiner reproduced such statement as Appendix 4 to his proposed report.

Exhibit No. C-343 shows the total mileage operated on the lines shown in Appendix 4 to the examiner's proposed report, as obtained from the Interstate Commerce Commission Statistics of Railways, Year 1925, Section C, and the portion of the mileage in differential territory, which applied on traffic generally, and the per cent the mileage in differential territory was of the total mileage operated.

The exhibit shows that of the 10,287.31 miles operated by the lines shown in the exhibit, that only 24.2 per cent was then in differential territory; and since 1925 the C. R. I. & G. now has 111.8 less miles in differential territory, as the line from Texola, Okla., to Amarillo, Tex., has been in- [fol. 1182] cluded in common point territory.

At the previous hearing there were offered some testimony and exhibits, and reasons for and against relating horse and mule rates to cattle rates. Since then various changes in rates and rate relations have occurred, and I, therefore, have some additional testimony to offer on this point.

At the time of the Commission's decision in the Southwestern Horse and Mule Case, 93 I. C. C. 479, wherein a scale of rates was prescribed for application on horses and mules within southwestern territory, there also existed rates on beef cattle within the same territory, as cited in the commission's decision in that case.

Incidentally, reference was also made in that decision to the fact that the commission had found in the South Dakota case, 77 I. C. C. 451, and the Nebraska Case, 89 I. C. C. 444, for reasons cited in those reports, rates on horses and mules 115 per cent of the beef cattle rates; and, in 93 I. C. C. at page 492, it is stated complainants requested southbound rates on horses and mules to Texas equal to 115 per cent of the northbound cattle rates, or 115 per cent of the southwestern cattle scale.

Regardless of this fact, however, the commission prescribed the scale which is set forth in Exhibit No. C-344.

On this exhibit we have also shown the beef cattle scale which was in effect within the southwestern region on April [fol. 1183] 20, 1925, which was the effective date of the horse and mule rates established in compliance with the commission's decision in 93 I. C. C. 479. This cattle scale was also in effect at the time the commission was considering the horse and mule rates.

In the last two columns we have shown the per cent the horse and mule rates prescribed in 93 I. C. C. were of the beef cattle rates in effect on the dates previously referred to.

At the bottom of page 2 we have shown what the situation would be on the average rate for distances 100 miles to 1,000 miles. In the case of the American National Live Stock Association et al. Docket 15686, 122, I. C. C. 609, and cases consolidated therewith, the commission found that the shor-haul rates were too high in the light of the Hoch-Smith Resolution, and to remove the existing discrepancies between short and long-haul rates, reduced rates were prescribed for distances up to 600 miles. We have also shown this scale on the exhibit.

By using the Docket 15686, 122 I. C. C. 609, scale for distances up to 600 miles and the rates shown in this exhibit for distances beyond on beef cattle, we have an average rate of 37.3 cents on single line and 39.1 cents on joint line. The horse and mule single-line scale is, therefore, 131.4 per cent of the beef cattle single-line scale, and the horse and mule joint-line scale is 128.6 per cent of the beef cattle joint-line scale.

[fol. 1184] We have introduced this exhibit to show, first, that there was no relationship prescribed by the commis-

sion in 93 I. C. C. 479, horses and mules to cattle, even though that issue was before them in the proceeding.

In addition to the previous reasons which I have offered for not relating horse and mule rates to the cattle rates, I also desire to point out that cattle are sold mainly for slaughtering purposes and are sold by the pound, while horses and mules are sold per animal and are not sold for slaughtering or food purposes.

It is my opinion that at least one reason for the low level of rates prescribed by the commission on livestock, except horses and mules, in the western district, 176 I. C. C. 1, can be attributed to the fact that these commodities are essentially of edible nature and are generally produced in territories far remote from the largest consuming centers. The letters F. R. A. in the fisrt column of Exhibit C-344 means "Federal Rate Authority" and refers to scale constructed by the Director General during federal control.

It is our position that the rates on horses and mules should not be related to cattle and calves or any other edible livestock for a number of reasons. In the first place, in connection with livestock rates prescribed in the 17000, 9, proceedings, 176 I. C. C. 1, the commission stated this was a commodity which, from its nature, could not be expected to do more than pay its own way, and that the rate level prescribed would produce no more than the cost of rendering the service plus a minimum profit; and even this rate level, the commission states, perhaps on some movements will not produce the minimum of profit previously referred [fol. 1185] to. Another reason is that there is a considerably greater volume of cattle and calves and other livestock moving than horses and mules, as shown by this Exhibit No. C-345.

It will be noted that horse and mule carloadings are but 7.7 per cent of the cattle and calves single-deck carloadings for the United States for 1930 and that the horse and mule tonnage is 7.8 per cent of the cattle and calves single deck tonnage.

The upper portion of this exhibit shows the number of head, in thousands, of all cattle and calves, including cows and heifers kept for milk, on the farms in the United States in 1929, with the value per head as compared with the same information on horses and mules, separately and combined. There is also shown the same information for the various

states in that portion of this bulletin designated as South Atlantic and South Central, taken from the Agricultural Year Book, 1930, Tables Nos. 350, 432 and 433.

It will be observed that mules are of much greater value than horses and that the combined value per head of horses and mules is $63.71 against $41.12 on cattle and calves; the value per head of horses and mules to cattle and calves is 123.6 per cent.

Since the prior hearing the commission has released its decision in I. C. C. 17000, 9, Southern Live Stock Rates, and has prescribed many commodity rates in the Southeast and [fol. 1186] Southwest. It is our contention that the relationship of first-class rates Southwest to Southeast, as reflected in the Consolidated Southwestern decision and the Southern class decision, does not now reflect the relationship on other classes and on the commodities, and should not be used as an inflexible rule in fixing commodity rates within or between the respective territories.

The commission has not done this in the past and we refer for substantiation of this statement to Sand, Gravel and Crushed Stone Within the Southwest, 155 I. C. C. 247; Rates on Refined Petroleum Products, From, To and Between Points in the Southwest, 174 I. C. C. 745. I also call attention to the expressions of the commission in Southern Live Stock Case, 171 I. C. C. 721; Southern Brick Case, 155 I. C. C. 730, at pages 736 and 737; the Sinclair Crude Oil Purchasing Company Case, 168 I. C. C. 449, at pages 473, 474 and 484; also the commission's decision in the City of Winter Haven et al., 169 I. C. C. 453.

The gist of the commission's statements in these decisions is that character and volume of traffic, character of territories, dependence of carriers in certain territories on certain kinds of traffic are elements which should be considered in fixing rates in the various territories. I have prepared several exhibits with respect to this subject.

Exhibit C-346 shows traffic originated on class I railways in various territories for the year 1929, as obtained from Interstate Commerce Commission Statement No. 30100. [fol. 1187] For the purpose of this hearing I will only refer to the tonnage in southwestern and southern regions. I will deal specifically with originated tonnage for the reason that it contains less duplicated tonnage than the figures shown in my Exhibit No. C-347.

Exhibit C 346 shows that there is a great deal more traffic moving within the southern region than within the southwestern region, and that products of agriculture within the Southwest form 15.35 per cent of the total tonnage, while in southern territory they only form 8.05 per cent. It is well known that rates within southwestern territory on agricultural products are very low; lower than within southern territory, and reduced rates recently published within the western district as a result of the commission's decision in Docket 17000, Part 7, 164 I. C. C. 619, have been withdrawn and the old rates permitted to become effective.

Animals and products form 2.53 per cent of the total tonnage in the southwestern region, while only .95 per cent of the total tonnage in southern region.

Products of mines form 38.88 per cent of the total tonnage originated in southwestern region, while forming 53.67 per cent of the total tonnage in southern region. Of the 38.88 per cent in southwestern region, 3.18 per cent of the total traffic originated, or 3,251,253 tons, is crude petroleum. In southern region there originated only 117,058 tons of crude petroleum, which was .07 per cent of the total tonnage. The rates on this traffic are made to meet pipe-line [fol. 1188] competition, and even though rates on this commodity are made very low, it is seldom that the carriers continue to handle a considerable amount of such traffic from a large producing field by reason of the construction of pipe lines to serve such fields. That condition prevails in the southwest territory.

Bituminous coal represents 12.03 per cent of the total tonnage originated in the southwestern region. This represents 12,292,379 tons. In the southern region there originated 59,953,222 tons of bituminous coal, which is 34.42 per cent of the total tonnage. The average per car weight of bituminous coal in southwestern region is 47.45 tons, and in southern region 50.45 tons.

Sand, gravel and stone, broken, ground or crushed, represent 18.13 per cent of the total tonnage originated, which is included in the products of mines, 38.88 per cent. This represents 18,530,753 tons in southwestern region. In southern region there originated 18,984,615 tons, which represents 10.90 per cent of the total tonnage. In 155 I. C. C. 247, the commission prescribed rates on these commodities

in the Southwest lower than theretofore prescribed in Central Freight Association and southeastern territories.

The coal, crude oil, and sand and gravel represent 33.34 per cent out of 38.88 per cent that products of mines are of the total tonnage originated in southwestern region, and [fol. 1189] in southern region form 45.39 per cent of the 53.67 per cent that products of mines are of the total tonnage originated.

Attention should also be called to the fact that there originated in southwestern region, under the heading of products of mines, 1,832,265 tons of sulphur, while only 60,231 tons originated in southern region. The rates on sulphur from the Southwest are very low and are held down to a large extent by water competition, there being a heavy movement from the South Texas fields through all of the Gulf ports, Galveston and Port Arthur and east, to all of the Atlantic ports from Jacksonville, Fla., to Portland, Me. There is also a movement via water from Galveston to New Orleans, thence via the Mississippi-Warrior Service and rail lines to Chicago, etc.

Manufactures and miscellaneous constitute 29.28 per cent of the total tonnage originated in southwestern region and 18.12 per cent in southern region. Included in this 29.28 per cent in southwestern region is 15.80 per cent, or 16,145,333 tons, of refined petroleum and its products.

The rates on these commodities are much lower within the southwestern region than in southern region, and, following the commission's decision in Part 4-A, 171 I. C. C. 381, where rates were fixed to meet pipe-line and truck competition, the carriers were forced to ask the commission for a further revision and reduction of the scale prescribed by it, which was granted by the commission in 174 I. C. C. 745. [fol. 1190] In southern region, this class of traffic is only 3.33 per cent of the total tonnage originated, such tonnage being 5,783,357 tons.

Many rates prescribed from the Southwest to the Southeast on refined petroleum oil are higher than the scale approved for application within the Southwest, as set forth in 174 I. C. C. 745, regardless of the competitive origin relationship prescribed from the Southwest to southeastern points in 171 I. C. C. 286.

For illustration, from Oklahoma Group 3 to Athens, Ga., a distance of 971 miles, set forth on page 372 of 171 I. C. C.

286, which distance approximates some of the distances involved in this proceeding, the commission, in 171 I. C. C. prescribed a rate of 63 cents. The scale set forth in 174 I. C. C. 745 for application within the Southwest for this distance produces a rate of 58 cents.

It should also be remembered that the southwestern lines, by reason of fourth-section complications at the Missouri and Mississippi River crossings and points beyond, can not obtain the full benefit of this mileage scale at points in the Southwest.

Exhibit C 347 is a statement of the traffic handled on Class I railways for the same period as shown in the previous exhibit, which is merely introduced to complete the record, as we have stated before that it is our best judgment that more accurate deductions can be drawn from figures [fol. 1191] of traffic originated in the various regions rather — on the traffic handled.

Exhibit C 348 shows the traffic originated in the various regions on Class I railways for the year 1930.

This brings the situation down to date as far as possible at this time. While there has been a considerable reduction in the total traffic handled in the two regions as compared with the year 1929, there is no material difference in the relationship of the classes of traffic there shown to the total tonnage as compared with my Exhibit No. C-349.

Of the manufactures and miscellaneous in southwestern region, I find petroleum and its products represent 15,294,525 tons, which is 16.73 per cent of the total tonnage; while in southern region there originated 5,632,528 tons of this class of traffic, which is 3.71 per cent of the total. Crude oil, originated in southwestern region, 3,856,176 tons, which is 4.22 per cent of the total tonnage; and in southern region there originated 64,116 tons, which is .04 per cent of the total tonnage. Bituminous coal, in southwestern region there originated 10,422,221 tons, or 11.40 per cent of the total tonnage; and in southern region 51,590,497 tons or 33.99 per cent of the total tonnage.

The statements I made with respect to the different commodities in connection with Exhibit No. C-346 are also applicable in connection with this exhibit (C-348).

Exhibit No. C-349, is a statement of the traffic handled [fol. 1192] on class I railways for the year 1930. The four exhibits and testimony just submitted show in a minor way

the different classes of traffic originated and handled in southwestern and southern regions, and it necessarily follows that an average level of rates in the Southwest 10 per cent over the southern rates will not apply in connection with the bulk of the southwestern tonnage if the commission continues to prescribe lower rates within and from the Southwest on the bulk of our traffic, which consists principally of agricultural products, animals, and oil. As a matter of fact, this class of tonnage was more than 50 per cent of the tonnage originated in southwestern region in 1929.

Exhibit C-350 shows that on sugar the commission has prescribed higher rates in the Southwest than in the Southeast by per cents greater than reflected in the first-class rate structure. In addition to the higher rates prescribed in the Southwest, there was also prescribed a higher minimum weight, 60,000 pounds, in the Southwest and 40,000 pounds in the Southeast.

In the course of the hearing held in Atlanta and Washington, in Docket 24674, complaint of J. W. Patterson Commission Company and others, the complainants testified, and our own investigation developed that in the past five years there has been a substantial increase in the volume of horses and mules shipped from the Southwest to Atlanta.

(Exhibits C-332 to C-350, both inclusive, witness Ryser, were received in evidence.)

[fol. 1193] Mr. Thompson: Mr. Examiner, of course, if there is objection to this I suppose it won't be admitted, but I have myself gone through the record in that case and abstracted all the testimony I could find by the complaining horse and mule dealers relating to the increased movement of horses and mules from the Southwest and the western district, which I have in exhibit form. If it may be received in evidence, I would like to offer it at this time as Exhibit C-351.

Mr. Ross: Now, I note here on page 2 there are some remarks about the production in Nebraska falling off, and there seems to be some other question about buying horses and mules in Nebraska. Now, I haven't had a chance to—

I don't know Mr. Patterson. I am going to object to this, I am afraid.

Exam. Witters: The Rules of Practice provide for the introduction of excerpts from other records.

Mr. Ross: This is in I. C. C. Docket 24674. Now, I haven't a copy of that transcript; I wasn't in the case.

The Witness: Mr. Ross, I might say that this case was heard during the first part of this year; and, on the second page, just before the stars appear, you will see that Mr. Patterson, in answer to a question, who was the main complainant in that case, said, "Well, my judgment would be that there had been a falling off, but we have gotten more stuff west of the Mississippi River in the last 5 years than we ever got before." Now, that's the testimony of the main complainant in that case. And it was testified in that case, and I was there at that time, that on higher rates they had more movement from the Southwest than they had ever had before.

[fol. 1194] Mr. Ross: Well, this is a case now pending before the commission, and it's in another docket that I know nothing of, and I am not a party to that case. Now, if there had been a decision entered by the commission, that would be another thing; but this is evidence in a case that I am not a party to in any way. I haven't had my day in court in connection with this docket, and I don't know all of the conditions surrounding the testimony, or what the other testimony may be. So I am just compelled to object to it. I wouldn't have a chance to cross-examine the witness.

Exam. Witters: Well, the Rules of Practice, Rule 13, Paragraph (b), provide that "in case any portion of the record before the Commission in any proceeding other than the one on hearing is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit, unless, first,"—and then follow four exceptions there. Now, your objection goes to the merits of the rule. Under the rule, I think it should be admitted.

Mr. King: You have the record here, have you not?

Mr. Thompson: I have the record here.

Mr. Ross: Well, I wouldn't have a chance to cross-examine the witness.

Exam. Witters: Well, then, your objection is to the rule and not to this.

Mr. Ross: I take it you are going to allow it to go in and I want an exception noted.

Mr. Thompson: Mr. Examiner, I have an exhibit relating to the testimony of the complaining horse and mule dealers at Atlanta given in the case above referred to, to the effect [fol. 1195] that so far as the Atlanta market is concerned the horses and mules shipped there are of much lighter weight and are getting lighter. I offer as Exhibit C-352 an excerpt from the transcript in the aforesaid case. It was taken from the same docket, No. 24674.

Mr. Ross: I wish to offer an objection to this exhibit also.

(Whereupon Exhibits C-351 and C-352 were admitted by the examiner and exceptions saved by Mr. Ross to the overruling of his objections thereto.)

Exhibits C-351 and C-352 read respectively in words and figures as follows:

[fol. 1196] EXHIBIT No. C-351

Witness, G. A. Ryser.

Testimony in No. 24674, J. W. Patterson Commission Company, Complainant, and Sub-Complaints thereto as to Increased Movement of Horses and Mules from the Southwest and the Western District to the Atlanta Market.

Cross-examination of J. W. Patterson.

Q. Just what territory do your shipments come from, can you tell us generally?

A. All the way from Denver——

Q. I mean the states.

A. From Colorado, from Nebraska, from Iowa, from Missouri, from Illinois, from Indiana, from Ohio, from Kentucky and from Tennessee. I would not say that that was every state. I have shipped horses practically from every state as far west as California.

Q. You didn't mention any of the southwestern states.

A. Oh, a great deal from Texas, Texas and Oklahoma.

Q. How about Arkansas and Louisiana, any from there?

A. Very few. (Page 20.)

Q. How long have you been buying mules from this territory, Mr. Patterson?

A. In which territory is that?

Q. Texas and Oklahoma.

A. Since 1904.

Q. Have you bought out there in any great volume since 1904—take back in 1905, 1906 and 1910.

[fol. 1197] A. No, sir, not in great volume at that time. It has been only in the last—well, I will say 5 years that that stuff has moved in volume from that southwestern territory to us. (Page 26.)

Q. Mr. Patterson, how long have you been buying horses and mules in Nebraska, Colorado and Iowa?

A. Since 1914.

Q. Has there been a steady falling off in the production of horses and mules in Nebraska, Colorado and Iowa since you started buying in that territory?

A. Has there been a steady falling off?

Q. Yes, sir, in the raising of them.

A. Well, my judgment would be that there had been a falling off, but we have gotten more stuff west of the Mississippi River in the last 5 years than we ever got before. (Page 27.)

Q. Mr. Patterson, how long have you been buying horses and mules in Indiana?

A. 35 years.

Q. How does the movement recently compare with that in former years, that is, as to your shipments?

A. Very much less; it grows lighter each year.

Q. How does the movement from Indiana compare with your shipments from other origin points?

A. Growing lighter each year. In fact, I moved a man away from that territory, moved him to Nebraska.

Q. Is Indiana a stock raising country?

[fol. 1198] A. Yes, sir.

Q. How does it compare with that in regard with some of the western states?

A. As to horses and mules?

Q. Yes.

A. The grading (raising) has fallen off tremendously in Indiana as compared with states west of the Mississippi River. (Page 28.)

Cross-examination of witness C. N. Ragsdale.

Q. You heard Mr. Patterson testify on cross-examination, did you?

A. Yes, sir.

Q. Would your answers be substantially the same as those he gave?

A. Well, except on the different states and things of that kind. I think we get mules from a good many more states than Mr. Patterson stated.

Q. Other than those he named?

A. Yes, sir, practically all of them in the west.

Q. In the west?

A. The west, southwest and middle west.

Q. None as far west as the Rocky Mountains, were there?

A. Well, I think Denver. That is this side of the Rockies. (Page 34.)

Q. You spoke of shipping from a good many states. What I want to know is, you only shipped from the states [fol. 1199] which you have named in the complaints, isn't that true?

A. I don't know just the states that have been named in the complaints.

Q. Well, there are specific points of origin named in your complaints where you get your horses and mules from?

A. I would say that the majority of them came from those states. (Page 35.)

Q. Mr. Patterson did not name any states that he receives shipments from north of Nebraska and Iowa. Have you received shipments from states north of there, like Dakota and Wisconsin?

A. We have never had any mules from Dakota and Wisconsin. (Page 38.)

Cross-examination of witness F. S. Hall.

Q. You heard Mr. Patterson's testimony, did you?

A. Yes, sir.

Q. Would your answers be substantially the same as he gave to the questions asked on cross-examination?

A. Yes, sir. (Page 42.)

[fol. 1200] EXHIBIT No. C-352

Witness, G. A. Ryser.

Testimony as to the use of animals of lighter weight than formerly.

Direct examination of witness J. W. Patterson.

Q. Do you know of your own knowledge whether or not horses and mules move on estimated weights of so many pounds per animal?

A. They do. The weight of each animal is estimated to be 1,000 pounds.

Q. What would you say was the average weight of the horses and mules covered by the complaints and which were shipped to you or your buying agents in Atlanta?

A. Not over 900 pounds per animal. I wish to say that in the Hudson Mule case I disagree very materially. They first started out to establish a weight of 1100 pounds. I said that was utterly unreasonable, and after looking thoroughly into our records it was my opinion that 900 pounds ought to be established, but we compromised on 1000 pounds.

Q. Since the Hudson Mule case, has the tendency in recent years been to ship lighter or heavier mules to Atlanta?

A. Lighter all the time. The heavy mule is just—well, these big road machines have taken the place of the heavier mules. (Pages 18-19.)

[fol. 1201] Direct examination of witness C. N. Ragsdale.

Q. Do you know whether or not horses and mules move on estimated weights of so many pounds per animal?

A. Yes, sir they do. The weight of each animal is estimated to be 1000 pounds.

Q. What would you say was the average weight of the horses and mules covered by sub numbers 2 and 3 to the complaint, and which were shipped to and received by the partnership?

A. Not over 900 pounds per animal on the average. (Pages 32-33.)

Direct examination of witness F. S. Hall.

Q. What were the weights of the animals in the cars?

A. Well, the number of head that was in the car, I have got it in my pocket.

Q. Just state it.

A. Well, there was 24,000 pounds in one of the cars, 25,000 pounds in another, and 26,000 pounds in another, and 30,000 pounds in another, according to the bills.

Q. Do you know whether the animals weighed the amount shown on the freight bills?

A. No, sir, they did not weigh that much.

Q. Were the animals large or small mules?

A. Small mules.

Q. What was the average weight?

A. Well, I would not think they would average over 800 pounds, they were small, all of them.

[fol. 1202] Q. Do you know whether or not the tendency in recent years has been to bring smaller mules into Atlanta?

A. Well, the demand has been for small mules, and I understand they have quit raising those bigger mules, there is no market for them. The people are using trucks for hauling, and tractors for breaking, and our trade demands a small mule. (Pages 39-40.)

[fol. 1203] Mr. Ross: The record should show that we object to the receipt of Exhibits C-351 and C-352.

Mr. Slattery (appearing with Mr. Tedrow): On behalf of the Kansas City market, too, we want to object to the introduction of C-351 and C-352.

The Witness: In connection with Docket 24647, involving rates from the Southwest to Atlanta, I made an investigation of the movement from points on our line to the Southeast as compared with the c. f. a. territory and I found there were many more cars moving to the South. It appears Atlanta has succeeded East St. Louis as the largest mule market in this country.

A check has been made of Appendix 4 to Examiner Simons' proposed report in this case, reproducing certain earning figures introduced in this case by Mr. Pelton, and certain of the figures as to the Louisiana Railway & Navigation Company were found to be erroneous. The correct figures as to that line are: Net operating income should be $31,199 instead of $31,999. The investment of the L. R. & N. of Texas should be $273,224 instead of $27,322,400.

Mr. Thompson: That completes our case.

(Whereupon, at 5:50 o'clock P. M., May 27, 1932, the hearing in the above entitled matter was closed.)

[fol. 1204] In United States District Court

[Title omitted]

Agreement as to Narrative Statement of Testimony

The within and foregoing 994 numbered pages, in two volumes, is hereby approved as a true and correct narrative statement of the testimony relative hereto taken before the Interstate Commerce Commission in its Docket No. 11018, in its Docket No. 13001, in its Investigation & Suspension Docket No. 1483, in its Docket No. 12358, in its Docket No. 13619, in its Docket No. 13627, in its Investigation & Suspension Docket No. 2389, in its Docket No. 12268, in its Docket No. 13273, and in re Fourth Section Applications Nos. 461, 462, 621, 673, and 678, the same having been reduced from the question and answer testimony filed in this cause as Exhibits AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, and KK, including the proceedings had before the court at the trial hereof.

Notice of the lodging of this narrative statement in the Clerk's office is hereby waived, and it is agreed that said narrative statement of testimony may be filed and approved immediately upon presentation to the District Judge without the necessity of notice to and appearance by the appellee defendants.

[fol. 1205] Dated January 2d, A. D. 1934.

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for Texas and New Orleans Railroad Company, et al., Appellant Plaintiffs.

Elmer B. Collins, Special Asst. to the Attorney-General. Nelson Thomas, Attorney for Interstate Commerce Commission, Solicitors for the United States of America and Interstate Commerce Commission, Appellee Defendants.

Approved January 12th, A. D. 1934.

Albert L. Reeves, United States District Judge.

[fol. 1206] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPROVING NARRATIVE STATEMENT OF TESTIMONY

The narrative statement of testimony taken before the Interstate Commerce Commission in its Docket No. 11018, in its Docket No. 13001, in its Investigation & Suspension Docket No. 1483, in its Docket No. 12358, in its Docket No. 13619, in its Docket No. 13627, in its Investigation & Suspension Docket No. 2389, in its Docket No. 12268, in its Docket No. 13273, and in re Fourth Section Applications Nos. 461, 462, 621, 673, and 678, together with the proceedings had at the trial hereof, consisting of 994 numbered pages, in two volumes, and bearing the approval of counsel for the respective parties and filed in this cause January —, A. D. 1935, is hereby approved as a true and correct statement and the Clerk is directed to transmit said narrative statement of testimony to the Supreme Court as a part of the original record in this cause.

[fol. 1207] Dated January 12th, A. D. 1935.

Albert L. Reeves, United States District Judge.

[File endorsement omitted.]

[fol. 1208] IN UNITED STATES DISTRICT COURT

STIPULATION THAT ORIGINAL RECORD BE TRANSMITTED ON APPEAL, ETC.—Filed Jan. 21, 1935

The parties to the cause styled, numbered, and pending as above hereby stipulate, with the approval of the Court, that the forty-four original exhibits introduced in evidence in the District Court on March 24, 1934, and designated for identification as plaintiff's Exhibits AA to ZZ and AB to AR, inclusive, and as Commission's Exhibit A, as more fully described and identified in the accompanying Transcript Covering the Offering of Documentary Evidence on Final Hearing for a Permanent Injunction, including a certified copy of all the testimony in question and answer form before the Interstate Commerce Commission and of

all the exhibits presented in connection therewith and in support thereof, may be transmitted on appeal to the Supreme Court of the United States. The parties will in-
[fol. 1209] dicate, or designate by stipulation, in the Supreme Court the parts of the aforesaid original exhibits transmitted from the District Court which shall be reproduced and printed.

Dated this 12th day of January, A. D. 1935.

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for Texas & New Orleans Railroad Company et al., Appellant-Plaintiffs. Elmer B. Collins, Solicitor for the United States of America, Appellee-Defendant. Nelson Thomas, Solicitor for Interstate Commerce Commission, Appellee-Defendant.

[File endorsement omitted.]

[fol. 1210] In United States District Court

Order Directing that Original Record be Transmitted as Original Exhibits on Appeal—Filed Jan. 21, 1935.

The stipulation of the parties, providing that the original record herein be transmitted on appeal, filed January —, 1935, is hereby approved and the Clerk is directed to certify and transmit to the Supreme Court of the United States as a part of the record on appeal in this cause the forty-four original exhibits introduced in evidence herein on March 24, 1935, and designated for identification as plaintiffs' Exhibits AA to ZZ and AB to AR, inclusive, and as Commission's Exhibit A, Exhibit AR consisting of nine maps.

Dated this 21st day of January, 1935.

Albert L. Reeves, United States District Judge.

[File endorsement omitted.]

[fol. 1211] IN UNITED STATES DISTRICT COURT

PRAECIPE FOR TRANSCRIPT OF RECORD AND WAIVER OF SERVICE AND NOTICE OF LODGMENT—Filed Jan. 21, 1935.

To the Clerk:

You will please prepare a transcript of the record in the cause styled, numbered, and pending as above and include therein, in the order given below, the following documents and papers, to wit:

1. Caption reciting date cause filed.
2. Amended bill of complaint, filed March 12, 1934.
3. Answer of United States to amended bill of complaint, filed March 24, 1934.
4. Intervention of Interstate Commerce Commission, filed March 9, 1934.
5. Answer of Interstate Commerce Commission to amended bill of complaint, filed March 24, 1934.
6. Order of March 24, 1934, calling case for trial.
7. Transcript covering presentation of documentary evidence before Court and narrative statement of testimony before Interstate Commerce Commission, filed January 12, 1935.

[fol. 1212] 8. Order taking case under advisement, entered March 24, 1934.

9. Opinion of the Court with findings of fact and conclusions of law, filed June 7, 1934.
10. Decree of dismissal, entered June 7, 1934.
11. Findings of fact and conclusions of law requested by plaintiffs, filed July 9, 1934.
12. Order denying findings of fact and conclusions of law requested by plaintiffs, filed July 10, 1934.
13. Petition for appeal, filed July 10, 1934.
14. Assignments of error, filed July 10, 1934.
15. Statement of jurisdiction, filed July 10, 1934.
16. Order allowing appeal, entered July 10, 1934.
17. Appeal bond and approval thereof, filed July 10, 1934.
18. Citation on appeal dated July 10, 1934, and filed July 20, 1934.
19. Notice of appeal to Attorney General of Missouri with acceptance of service, filed July 20, 1934.
20. Notice of appeal to United States Attorney General

and to counsel for Interstate Commerce Commission with acceptance of service, filed July 20, 1934.

21. Acknowledgments of service of petition for appeal, assignment of errors, statement as to jurisdiction, and order allowing appeal pursuant to Rule 12 of Supreme Court Rules with acceptance of service, filed July 31, 1934.

22. Petition for stay of orders of Interstate Commerce Commission pending appeal, filed July 10, 1934.

23. Order denying stay pending appeal, entered July 10, 1934.

24. Order enlarging time for filing transcript and docketing cause in Supreme Court, dated July 28, 1934, and filed July 31, 1934.

25. Order further enlarging time for filing transcript and docketing cause in Supreme Court, filed November 9, 1934.

26. Order further enlarging time for filing transcript and docketing cause in Supreme Court, filed December 6, 1934.

27. Stipulation that original record be transmitted to Supreme Court on appeal, etc., filed January 21, 1935.

28. Order directing record to be transmitted to Supreme Court on appeal, entered January 21, 1935.

29. Præcipe for transcript of record and waiver of service and notice of lodgment, filed January 21, 1935.

30. Clerk's certificate.

[fol. 1213] You are further requested and directed to certify to the Supreme Court of the United States, as original exhibits, all the documents set out and described in the order of the Court entered or to be entered herein directing the certification thereof as original exhibits, filed January 17th, 1933, and not to include the said original exhibits in your transcript.

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for Appellants, Texas and New Orleans Railroad Company et al.

Service of the foregoing præcipe for transcript of record and receipt of a copy thereof are hereby accepted and acknowledged on the dates shown below, and we hereby waive notice of the filing thereof and agree that the documents listed therein shall constitute the transcript on appeal,

which may be filed as soon as the preparation thereof is completed.

This 12th day of January, 1935.

The United States of America, by Elmer B. Collins, Special Assistant to the Attorney General.

This 12th day of January, 1935.

Interstate Commerce Commission, by Nelson Thomas, Its Solicitor.

[File endorsement omitted.]

[fol. 1214] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI

In Equity

No. 2449

TEXAS & NEW ORLEANS RAILROAD COMPANY et al., Petitioners,

vs.

UNITED STATES OF AMERICA, Defendant,

and

INTERSTATE COMMERCE COMMISSION, Intervening Defendant

Before Van Valkenburgh, Circuit Judge, and Reeves and Otis, District Judges

OPINION—Filed June 7, 1934

PER CURIAM:

This is an action permitted by Section 47, Title 28, United States Code. The petitioners seek to enjoin the enforcement of certain orders made by the Interstate Commerce Commission.

The first and most important of the orders was the one which prescribed a schedule of tariffs designated as the Southwestern Horse and Mule Scale. This order was based upon a finding that the transportation of horses and

mules was so far analogous to the transportation of fat-cattle as to justify the Commission in relating the tariffs thereto and fixing a scale of 115 percent of the fat-cattle tariffs. Moreover, the Commission withdrew from the carriers certain relief previously granted under the Fourth Section of the Interstate Commerce Act. Said Section permitted the Interstate Commerce Commission to authorize [fol. 1215] a common carrier, upon application and after investigation in special cases to charge more for a shorter than for a longer haul, notwithstanding statutory inhibitions.

The petitioners complain about the withdrawal of this relief, although it was expressly stated by the Commission that the petitioners "may file applications for such relief as they may require in connection with the rates here prescribed."

The basis of the charge against the validity of the orders was that they were made without substantial factual support, and that they were "arbitrary, capricious, unreasonable, and without deference or regard to the law, being either contrary to or unsupported by the evidence, or both, and hence are void and useless and should be set aside, vacated, and nullified by appropriate orders of this court."

The report of the Commission upon which the orders were based properly set forth the pith of the inquiry as follows:

"A fundamental question is whether the rates on horses and mules should bear some fixed relation to the rates on other kinds of livestock, more particularly on fat cattle. The shippers and shipping organizations represented at the hearings are unanimously of the opinion that the rates on horses and mules should be related to the rates on fat cattle, and they cite the Dimmitt-Caudle-Smith case, the South Dakota case, and Nebraska Livestock case, wherein such a relationship was prescribed."

[fol. 1216] The report then contained a recital that,

"Various unusual expenses are incurred in the transportation of livestock. Among these are the costs of construction, and maintenance of loading and unloading enclosures and runways. Special tracks have to be constructed to these yards, and facilities afforded for feed-

ing, watering, and resting livestock in transit under the requirements of the Federal 28-hour law."

The Commission, after enumerating peculiarities in the transportation of livestock, said:

"None of these expenses are peculiar to the transportation of horses and mules. They are incurred in the transportation of all livestock. Such evidence does not justify the singling out of horses and mules as the exception to the general application on all kinds of ordinary livestock of rates related to the fat-cattle rates."

Thereafter the Commission pointed out differences in the two classes of livestock. It said:

"The only substantial transportation disadvantages of horses and mules as compared with other forms of ordinary livestock are a higher percentage of claims for loss and damage and a higher per car valuation. The shippers concede that horses and mules are more subject to injury than cattle, but they will be satisfied with a higher level of rates than may apply on cattle."

Thereafter the Commission set forth in detail the data gathered by it in the form of evidence, and from it made its deductions and based its orders. It made a full statement of the facts, and then found:

"That maximum reasonable rates for the transportation of horses, mules, burros, and asses between points in the territory described at the beginning of this report will be 115 percent of the rates on cattle from and to the same points."

[fol. 1217] In prescribing such rates it was necessary for the Commission to modify and readjust former scales of rates. The object of the law is to secure and enforce reasonable charges for the transportation of property and to forbid unreasonable and unjust charges. Moreover, preferences and discrimination are prohibited. To the end that no hardship might be imposed in an individual case "flexible administrative processes" were provided so that adjustments might be made from time to time and previous orders modified so as to meet the necessities of the time and place.

1. In view of the allegations of the bill and the statements contained in the brief of petitioners that the Commission acted arbitrarily, capriciously and unreasonably, this court must at the outset indulge the recognized presumption of the law, that public officers will not only do their duty, but that they will perform such duty faithfully. This presumption must be indulged in the absence of proof to the contrary.

Moreover, if the orders of the Commission are supported by substantial testimony, in the absence of irregularity or misapplication of principles of law, the court would be precluded from interference. Furthermore,

"the findings of the Commission are made by law prima facie true, and this Court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience." Interstate Commerce Commission v. Union Pacific R. R., 222 U. S. 541.

If, therefore, the findings of the Commission are supported by any substantial evidence, this court will be concluded, except, as above stated, some irregularity in the proceedings or some error in the application of the rules of law should require judicial relief.

[fol. 1218] 2. It is obvious from the report of the Commission, and from the statements and briefs of the parties, that there was substantial evidence in support of the order of the Commission fixing the rate for the transportation of horses and mules at 115 percent of the rate or schedule of rates on fat-cattle.

Ordinarily this would end the discussion for, as stated in Florida et al. v. The United States et al. (Opinion of the Supreme Court filed April 2, 1934, and being numbered 342):

"When the Commission exercises its authority upon due hearing, as prescribed, and without error in the application of rules of law, its findings of fact supported by substantial evidence are not subject to review. It is not the province of the courts to substitute their judgment for that of the Commission."

It is difficult to perceive how the Commission could have related the scale of tariffs pertaining to horses and mules to any other property more logically than that of fat-cattle.

According to the report of the Commission, other livestock shipments were related in the same fashion.

3. There is nothing in the record to indicate that the decision made by the Commission on July 24, 1933 "was preconceived and premeditated."

This decision was not accompanied by an order, but, on the contrary, the carriers were afforded an opportunity voluntarily to adjust their scale of tariffs to meet the decision of the Commission. The matter had been pending before the Commission for several years. Admittedly, it was beset with complexities and involved questions. These were solved finally by the decision of July 24, 1933, [fol, 1219] although as stated, it required a modification and partial amendment of previous orders. The carriers did not proceed to readjust in accordance with the decision of the Commission, but filed their petition for a rehearing.

This petition raised and agitated the same questions that previously had vexed and probably somewhat confused the Commission. The Commission doubtless felt that the controversy should be in repose after so long an inquiry and controversy, and accordingly denied the petition.

About one month later, or to be exact on December 11, 1933, it promulgated the orders here complained against. This would not indicate that the Commission acted capriciously, arbitrarily or unreasonably, but, on the contrary, that it proceeded with commendable deliberation and caution. Moreover, the fact that the Commission invited application from the carriers to secure the relief vouchsafed to them under Section Four of the Interstate Commerce Act would negative the charge that the Commission was guilty of arbitrary and capricious action.

4. It does not seem necessary to discuss other constitutional questions raised by the pleadings and briefs of the parties. It was clearly the right of the Commission "to compare the rates assailed with other rates which in its judgment formed a proper basis of comparison." Northern Pacific Ry. Co. v. United States, 60 Fed. (2d) 302; Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88, l. c. 98.

Moreover, it is not within the province of the court either to consider the weight of the evidence before the Commis-

sion or "the soundness of the reasoning by which its conclusions were reached, or whether the findings are con- [fol. 1220] sistent with those made by it in other cases." Virginian Ry. Co. v. United States, 272 U. S. 658, l. c. 663.

In view of the above, the bill and the evidence in support thereof are insufficient to warrant interference with the enforcement of the orders assailed, and in consequence the bill should be dismissed.

FINDINGS OF FACT

The court finds that the Interstate Commerce Commission made the order complained against in plaintiffs' bill after full, adequate and complete investigation of all the facts; and that such orders were not arbitrary, capricious, nor unreasonable, but, on the contrary, such orders were made with due deference and regard to the law, and that same were supported by the evidence.

CONCLUSIONS OF LAW

The court, therefore, concludes that the plaintiffs are not entitled to the relief prayed, and that application for a final injunction should be denied.

[File endorsement omitted.]

[fol. 1221] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 1222–1231] EXHIBIT "MM"

H. W. H.

* * * * * * * * *

[fol. 1232] INTERSTATE COMMERCE COMMISSION

No. 13001

THE CHAMBER OF COMMERCE OF KANSAS CITY, MO.,

v.

THE ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

ORDER—May 27, 1924

Upon further consideration of the record in the above entitled proceeding, and good cause appearing therefor;

It is ordered that the effective date of the order entered in this proceeding on April 26, 1924, be, and it is hereby, postponed until the further order of the Commission.

By the Commission, Division 1.

George B. McGinty, Secretary. (Seal.)

[fol. 1233] Interstate Commerce Commission

No. 13001

The Chamber of Commerce of Kansas City, Mo.,

vs.

Alexandria & Western Railway Company et al.

Order—June 25, 1924

Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

It is ordered that this proceeding be, and it is hereby, reopened for further consideration by the Commission, upon the record as made.

It is further ordered that complainant's petition for re-argument be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1234] Exhibit "NN"

H. W. H.

* * * * * * *

[fol. 1235] Interstate Commerce Commission

Investigation and Suspension Docket No. 1483

Horses and Mules from Kansas City, Mo., and Wichita, Kan., to New Orleans, La., Memphis, Tenn., and Other Points

Order—July 26, 1922

Upon further consideration of the record in the above-entitled proceeding, and of petition for modification of the

report of the Commission therein, filed by the Chamber of Commerce of Kansas City, and of respondents' petition for rehearing or reargument:

It is ordered that the said petition of the Chamber of Commerce of Kansas City, be, and it is hereby, denied.

It is further ordered that this proceeding be, and it is hereby, reopened for such further proceedings as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1236] EXHIBIT "OO"

H. W. H.

[fol. 1237] INTERSTATE COMMERCE COMMISSION

No. 11018

WICHITA BOARD OF COMMERCE et al.

v.

DIRECTOR GENERAL, AS AGENT, ALEXANDRIA & WESTERN RAILROAD COMPANY, et al.

ORDER—Nov. 10, 1924

Upon further consideration of the record in the above-entitled proceeding, and good cause appearing therefor:

It is ordered that this proceeding be, and it is hereby, reopened for further consideration.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fols. 1238–1269] EXHIBIT "QQ"

H. W. H.

[fols. 1270–1276] BEFORE INTERSTATE COMMERCE COMMISSION

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al.

vs.

JAS. C. DAVIS, Director General of Railways, as Agent, ABILENE AND SOUTHERN RAILWAY COMPANY, et al.

Horse and Mule Rates in the Southwest, 1924

Nos. 12358-13619-13627

PETITION—Filed Dec. 29, 1924

Comes now your petitioners and complainants in the above styled causes and respectfully shows:

I

That heretofore, to wit, on November 10, 1924 your honorable body rendered a decision in the above styled causes wherein other complainants than those named on page 14 of said decision are permitted to apply, within 60 days for further hearing as to reparation.

II

That such other complainants are as follows:

[fol. 1277]

III

That the following complainants and interveners made, and caused to be made, numerous shipments of horses and mules, previous and subsequent to the hearings of these causes, Not of record but amenable to the decision of the Commission therein, and on which said complainants and

interveners are entitled to reparation on the awarded basis:

Wm. Blecha, Munden, Kans.

Burnett-Yount Horse and Mule Co., Ft. Worth, Texas. S. Q. Burnett, J. M. Yount, S. E. Ross, partnership.

J. A. Caulk, Hennessey, Okla.

Caulk & Stinson, Hennessey, Okla. J. A. Caulk, J. C. Stinson, partnership.

J. C. Ellington, Marksville, La.

Ft. Worth Horse & Mule Co. M. G. Whittington, G. I. King, partnership.

C. E. Goldsmith, Pond Creek, Okla.

J. M. Grogan, Arlington, Texas.

Hall & Free, Alva, Okla. Ed. Hall, J. M. Free, partnership.

Harp & Martin, Ft. Worth, Texas. F. A. Harp-T. R. Martin, partnership.

J. B. Jackson, Wynnewood, Okla.

Lemoine & Ellington. V. L. Lemoine, C. J. Ellington, partnership.

L. Luckett, Alexandria, La.

Lucket & Hunter, Inc., Alexandria, La.

Mulch & Blecha, Munden, Kans. Fred Mulch, Wm. Blecha, partnership.

D. S. Murray, Roswell, New Mex.

S. A. Overton, Ft. Worth, Texas.

S. R. Ponder, Ft. Worth, Texas.

D. I. Potter, Ft. Worth, Texas.

J. T. Quinn, Carnegie, Okla.

[fol. 1278] Quinn & Ralston, J. T. Quinn, Carnegie, Okla., Q. H. Ralston, Weatherford, Okla., partnership.

W. O. Rominger & Co., W. O. and C. Rominger, partnership.

S. E. Ross, Ft. Worth, Texas, W. R. Ross, Ft. Worth, Texas, Ross Bros. Horse & Mule Co., Inc., Ft. Worth, Texas.

J. C. Shelton, Ft. Worth, Texas.

Shelton & Jamison, J. C. Shelton, P. Jamison, partnership.

C. C. Smith, Kingfisher, Okla.

Smith & Scott, Kingfisher, Okla.; C. C. Smith, W. J. Scott, Madill, Okla., partnership.

Smith & Smith, Kingfisher, Okla. C. C. & C. L. Smith, partnership.

J. C. Stinson, Hennessey, Okla.

H. P. Walker, Ft. Worth, Texas.

Walker & Company, Ft. Worth, Texas. H. P. Walker, S. E. Ross, parnership.

J. M. Yount, Ft. Worth, Texas.

Pete Yount, Ft. Worth, Texas.

Yount & Chastain. P. Yount, P. G. Chastain, partnership.

Yount & Elkins, Ft. Worth, Texas. J. M. Yount, Horace Elkins, partnership.

Yount & Smith. J. M. Yount, Ft. Worth, Texas., C. C. Smith, Kingfisher, Okla., partnership.

Yount & Thomas. P. Yount, Ft. Worth, Texas; C. S. Thomas, Lawton, Okla.

Wherefore complainants and intervenors pray that further hearing be granted in the above-entitled cases and that the Commission enter such further order or orders in the premises as to it may seem reasonable and just.

B. D. Pelton, for Complainants and Intervenors.

Dated at Ft. Worth, Texas, Dec. 23, 1924.

[fol. 1279] Interstate Commerce Commission

No. 12358

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al.

v.

DIRECTOR GENERAL, AS AGENT, ABILENE AND SOUTHERN RAILWAY COMPANY et al.

No. 11018

WICHITA BOARD OF COMMERCE et al.

v.

DIRECTOR GENERAL, AS AGENT, ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

Investigation and Suspension Docket No. 1483

Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and other Points.

No. 13001

CHAMBER OF COMMERCE OF KANSAS CITY, MO.,

v.

ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

No. 13619

ROSS BROTHERS HORSE & MULE COMPANY et al.

v.

UNION PACIFIC RAILROAD COMPANY et al.

No. 13627

BURNETT-YOUNT HORSE & MULE COMPANY et al.

v.

ABILENE & SOUTHERN RAILWAY COMPANY et al.

Portions of Fourth-Section Applications Nos. 461, 462, 621, 673, and 678

CORRECTED ORDER—Jan. 12, 1925

Upon further consideration of the record in the above-entitled proceedings, of petition of the respondents and defendants therein and of carriers parties to the above-numbered fourth-section applications, for extension of the effective date of the orders entered therein, and of applica-

tion of complainants and interveners in Nos. 12358, 13619 and 13627 for further hearing as to reparation.

It is ordered, that the orders entered in these proceedings on November 10, 1924, which were by their terms made effective February 20, 1925, be, and they are hereby modified so that they will become effective on April 20, 1925, instead of on said February 20, 1925; but in all other respects the said orders of November 10, 1924, shall remain in full force and effect.

And it is further ordered, that Nos. 12358, 13619, and 13627 be, and they are hereby, reopened for further hearing at such time and place as the Commission may hereafter direct, with respect to reparation, (a) on such shipments, if any, as may be found to have been made by parties to said proceedings, other than those named on pages 494 and 495 of the Commission's report entered herein on November 10, 1924, under the rates found in said report to have been unreasonable, and (b), on shipments made by parties to said proceedings and moving subsequent to the dates of the respective hearings therein.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1280] Before Interstate Commerce Commission

Horse and Mule Rates in the Southwest, 1924

Nos. 12358, 13619, and 13627

Texas Live Stock Shippers Protective League et al

vs.

Director General, as Agent, Abilene and Southern Railway Company et al.

and Consolidated Cases 12358 and Others

Listed in the Margin of the Opinion

(Submitted November 10, 1924. Decided November 10, 1924. Served December 1, 1924.)

Motion for Rehearing by Complainants in 12358, 13619, 13617—Filed Jan. 15, 1925

Come now the complainants and intervenors in the above entitled causes and file this, their motion for rehearing

and modification of the report and opinion, conclusions and decisions of the Commission in said causes, upon the following grounds and for the following reasons:

The Commission erred in its conclusions in limiting its findings that the rates complained of were unreasonable only on shipments between Ft. Worth and points in Kansas and Missouri and in its conclusion that the rates assailed were not otherwise unreasonable for the past and refusing to award reparation as to shipments between points in other territory than between Kansas and Missouri and Ft. Worth, and in holding that the rates in other territory involved would be unreasonable for the future to the extent that they exceeded the rates for similar distances set forth in the appendix in the schedule of interstate rates prescribed in said causes, and in holding that the interstate rates involved on traffic between Ft. Worth and New Mexico and Texas differential territory, would for the future be unduly prejudicial to Ft. Worth and unduly preferential of Wichita, Kans., Kansas City, St. Joseph, Mo., St. Louis and Oklahoma City by the amounts they exceeded the rates contemporaneously charged by defendants on like traffic from or to the same stations and to or from Wichita, Kansas City, St. Joseph, St. Louis and Oklahoma City, and in failing to find that said rates were unjust and unreasonable for the past, and in failing to award reparation thereon.

[fol. 1281] Complainants say that by reason of the same facts, the same conclusions and the same logic which constituted the basis of the decision of the Commission, that the rates aforesaid were unreasonable and unjust for the future and for the future would be unduly prejudicial and preferential, said rates have likewise been shown to have been unreasonable for the past and unduly prejudicial and preferential, and the Commission should have so found and should have awarded reparation accordingly.

On sheet 4 of the report of the Commission it is stated: "That the class A rates are too high for future general application to horse and mule traffic in the southwest is not seriously questioned. Defendants themselves propose class B rates for the future. Prior to April, 1917, rates on horses and mules, carloads, to Texas points were on the class C Basis, and the increase to the class A basis at that time advanced the southbound rates approximately 35 per cent. Under General Order 28 of the Director General, the maxi-

mum increase of the commodity rates was 7 cents, while on the class rates the full 25 per cent increase applied. This had the effect of further widening the difference between the north bound and south bound rates. Since 1922, certain of the class A rates to Ft. Worth have been reduced to the basis of the lowest combination. Even with such reductions the disparity between the rates to and from Ft. Worth is considerable as indicated in the following table."

In fact the lowest combination was established only in a very few instances, when based on Texarkana, Ark.-Tex.

Complainants further say that the Commission erred in its findings that the rates have not been shown unreasonable in the past as pointed out as to certain of the rates, other than those applicable to and from points in Kansas and Missouri, and for the further reason that the excessive rates complained of were for the most part the application of class A rates, which were wholly inapplicable, as found by the Commission, which plainly shows moved on the commodity rates, as found by the Commission in prescribing its scale of rates, and those reasons applied before the date of the filing of the petition and the hearing in these cases three years ago, and at the time the shipments were made and the rates paid, for which reparation was claimed. Likewise the rates, like those in which reparation was claimed. Likewise the rates, like those in I. & S. 958, being the cattle rates of the Shreveport scale, and the subsequent extension of that scale, as herein shown on Pages 4 and 5, all took place long prior to the filing of the complaint and the hearing of these cases. So it is with the decision of the Commission in prescribing 115 per cent of the cattle rate as a proper rate for horse and mules in the western and southwestern territories.

Therefore it follows that the primary facts, the fundamental reasons logic and argument sufficient to show that the rates existing would be unreasonable for the future by the amount that they exceeded the scale prescribed by the Commission in the appendix to the decision, had precisely the same effect necessary to show that the rates were unreasonable, at least from the time of filing the complaint and proof was made at the hearings of the causes and at the time of existence of the facts upon which the Commission relied to establish the reasonableness of the rates for the future. Throughout the discussion following the cita-

tion and authorities and rates prescribed by the Commis-
[fol. 1282] sion, these rates are shown to be ex—which led the Commission to prescribe lower rates for the future.

So the Commission should find that the rates were unjust and unreasonable for the past as well as for the future.

On page 4 of the opinion the Commission points out the outrageous increases in rates applicable on shipments from Kansas City to Colbert, Okla., $132.00, to Denison, Texas, $251.85, an increase of $119.85 for 8 miles, crossing the state line into Texas. The same outrageous increase applies at each and every entrance to Texas. See Pelton's Exhibits 5, 6, 13, 31 and 32, in 12358.

Thus, it is manifest that the Commission erroneously held that any such rates as these were not unreasonable for the past upon the evidence of the record and the findings of the Commission.

The present rates on horses and mules between Oklahoma and Texas which have been in effect since August 26, 1929, Ex parte 74, yield revenue per car mile as follows, and shows conclusively that the Commission was in error in not finding these rates between Oklahoma and Texas points were unreasonable for the past.

Miles	36-ft. car	40-ft. car
50	$1.357	$1.52
100	.954	1.069
150	.744	.833
200	.655	.734
250	.57	.639
300	.495	.554

Southwestern Line's Tariff, I. C. C. 1590.

No stronger proof, conceded and concurred in by the Commission, of unreasonableness in the past could be made or shown than that set out in the second paragraph, page 5, of the opinion and especially the last sentence. "The Oklahoma-Texas rates are plainly too high and the combination rates taken as entireties also appear excessive."

If rates are "plainly too high" they are, inevitably, unreasonable and the evidence upon which the Commission made this finding was submitted three years ago and shown to have been in effect a number of years.

Yet reparation is awarded, in part, only on basis of the in-remediates, which "also appear excessive", so that after

reparation is paid under the *arare*, complainants will still have paid admittedly unreasonable rates and rates that were "plainly too high" and while the 'combinations appear excessive", reaparation is awarded only down to that excessive basis.

Innumerable instances were shown with similar results. It was fully developed in the record. (See Pelton's Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 22, 30, 32, 35 in 12358).

This came from the class A rate basis condemned by the Commission, which were as "plainly too high" for the past as well as for the future, or any time that these complainants paid the same, for which there is no excuse, and for which defendants are plainly liable to pay reparation. No stretch of the imagination can render such rates reasonable either in the past or for the future. Futhermore, the defendants themselves admit these rates were too high. (Dowlin page 397, Swenson 355, 352 in 12358) and discriminatory (Swenson page 358 in 12358).

[fol. 1283] The Commission erred in beginning the scale of rates at 100 miles and in not rendering its decision with respect to rates for shorter distances beginning as usual at 100 miles or less like was prescribed in the Shreveport scale. Confessedly, practically no live stock move to and from Shreveport for short distances but the public is entitled to a scale of rates, and it is the province of the Commission to prescribe it and the very fact of the scale involves the usual distances employed in rate making.

It was erroneously assumed by the Commission that there would be no movement interstate to and from Ft. Worth, less than 100 miles, while, in fact, nearly all Southern Oklahoma border points are less than 100 miles from Ft. Worth. Besides the Commission was Not limiting its findings to prescribing rates to and from Ft. Worth, but, after bringing in cases 11018 and 13901, to the whole southwest. The omission of the first 100 miles from the schedule creates a dead zone of 99.9 miles on each and every state boundary line within the scope of the decision. Thus, Joplin, Mo., can reach portions of Arkansas, Oklahoma and Kansas 100 or more miles distant and such points in Texas as Gainesville and Denison near Red River will have rates over the northern half of Oklahoma only, it being approximately 200 miles across that state, north and south. The order

does not say so, certainly the Commission did not so intend and it is not reasonable to suppose that the 24 cent rate prescribed for 100 miles should or would be used for all distances under 100 miles.

The Commission erred in its findings on sheet 9, which we quote as follows: "But the record is insufficient to warrant us in determining interstate rates to Ft. Worth from Texas differential territory and New Mexico, "and the Shreveport scales are no higher in differential territory than in common point territory."

Certainly rates between Ft. Worth and Texas differential territory are not interstate rates and it is odd that the Commission should so consider them.

The Commission fixed the same scale to apply in both territories (Docket 8418) and the Railroad Administration (F. R. A. 2797) extended the same scale (Shreveport) on all live stock other than horses and mules, to cover practically all of New Mexico and there is no evidence in the instant cases to warrant or support the conclusion of the Commission that there should now be different rates. On sheet 9 the Commission states "The Shreveport scale on cattle and on horses and mules are no higher in differential territory than in common point territory and the present southwestern cattle scale applies quite generally from points in New Mexico and Texas differential territory. "These findings in the opinion itself, taken in connection with the appendix prescribing to specific rates, we submit, affords the basis for the modification of the findings of the Commission aforesaid with respect to the New Mexico and Texas differential rates. Witness Pelton's exhibit 23 in 12358 shown New Mexico and Arizona interstate and intrastate rates lower than the Shreveport scale which is lower than the scale fixed by the Commission in the instant cases.

Being originally promulgated by the Railroad Administration in F. R. A. 2797, Southwestern Line's tariff, I. C. C. 166, extends the Shreveport scale on all live stock, except horses and mules, to cover Oklahoma, Arkansas, Louisiana and practically all of New Mexico, and including Wichita and Arkansas City, Kans., Natchez and Vicksburg, Miss. and New Orleans, La.

[fol. 1284] Pelton's exhibit 24 in 12358 shows 12 cases wherein the Commission has extended the Shreveport scale on all live stock, except horses and mules, to cover practi-

call the entire southwest and the carriers have long maintained through commodity rates between New Mexico and northern points, some on horses and mules and many lower than the Shreveport scale. Pelton's Exhibit 4 in 13627.

The Commission erred in not including St. Joseph, Mo., and the shipments therefrom in its findings in the same manner precisely as it found in respect to Kansas City, because St. Joseph has always been considered in the Kansas City group, and held on a parity therewith, in rate bases of live stock rates uniformly by all southwestern lines themselves and by the Commission in prescribing rates between St. Joseph and the southwest generally. On sheet 12 it is stated by the Commission: "In a number of recent cases we have found the Shreveport scale to provide a reasonable basis for rates on cattle and hogs from Kansas City and South St. Joseph to Ft. Worth and Oklahoma City."

The Commission erred in not awarding reaparation to all complainants named in exhibits 18, 20, 21 and 38 in 12358 and exhibit 8 in 13527, following S. P. Co. vs. Darnell-Taenzer Lumber Co., 245 U. S. 531, and Missouri Portland Cement Co. vs. Director General, 64 I. C. C. 243; the evidence being identical with that of the others to whom and on which, reparation was awarded.

The Commission erred in not awarding reaparation to all complainants named in exhibits 18, 20, 21 and 38 in 12358 and exhibit 8 in 13527, following S. P. Co., vs. Darnell-Taenzer Lumber Co., 245 U. S. 531, and Missouri Portland Cement Co., vs. Director General, 64 I. C. C. 243; the evidence being identical with that of the others to whom and on which, reparation was awarded.

The Commission erred in not finding sufficient proof of pecuniary damage and awarding reparation accordingly. See witnesses in 12358 at pages shown: Yount, 51-54-60; White, 80-82; Rominger, 89-98-108-104; Ross, 121-141; Beasley, 199; Whittington, 209; Hicks, 217; Blecha, 229; Caulk, 241; Ellington, 247-249; Pelton, 123 in 13627.

Defendants Dowlin, 397 (rates too high); Swenson, 352-355 (rates too high) and 354-357 (rates discriminatory).

The Commission erred in not prescribing a scale of minimum weights to be used in connection with the scale of rates prescribed.

The conclusion and finding with respect to the rates between Texas and points in Kansas and Missouri, are iden-

tical and as forceful to establish, both, that the rates are unjust and unreasonable in that they were and are excessively high, and being excessively high are and were unduly preferential and prejudicial because of the lower and more advantageous rates enjoyed by Kansas City, for example, than Ft. Worth, and generally as compared with the rates to and from points in Kansas and Missouri. The amount to which they were unreasonable and unduly prejudicial is the unreasonable part of the rate and essentially it was the payment of the unreasonable rates that entitles the complainants to reparation and that amount is to be ascertained by the difference between the rates paid by the complainants and that found reasonable and prescribed [fol. 1285] by the Commission for the future. It is illogical and impossible upon consideration of the foregoing facts, to conclude or consider that the rates in the various cases cited, including the Shreveport scale, the Hudson Mule, South Dakota and the Nebraska cases, could be, as it plainly is, evidence that the rates complained of, would be unreasonable for the future and not by the same token show them to have been unreasonable for the past and at the time complainants paid the excessive and unreasonable rates.

The Commission, therefore, should modify its finding in these particulars and find that the rates which it found to be unreasonable for the future between points embraced within all of the territory covered by the complaints, were unreasonable for the past as well, when complainants paid the unreasonable and unlawful charges, and that such rates were likewise unjustly discriminatory, unduly prejudicial and preferential to the same extent in the other territory involved, and that complainants and interveners were damaged thereby, and to the same extent, precisely in all respects as applied to the rates paid from points in Missouri and Kansas to Ft. Worth; upon which and because of which reparation was awarded; and upon the evidence submitted, reparation awarded on shipments other than between Ft. Worth and Missouri and Kansas points, and on basis of the sum of the intermediates on all interstate shipments within the territory involved and upon each and all of such cases.

And in all other matters set forth herein, the Commission should so revise and modify its conclusions, opinion

and decision so that justice may and will be accorded all complainants and intervenors, equally, in these causes.

Respectfully submitted, B. D. Pelton, S. H. Cowan, for Complainants and Interveners.

Dated at Ft. Worth, Texas, January 9, 1925.

[fol. 1286] Before Interstate Commerce Commission

Horse and Mule Rates in the Southwest, 1924

I. C. C. Dockets 12358, 11018, 13001, 13619, 13627, I. & S. Docket 1483, Fourth Section Applications 461, 462, 621, 673 and 678

PETITION OF THE KANSAS PUBLIC UTILITIES COMMISSION AND THE CHAMBER OF COMMERCE OF KANSAS CITY, MISSOURI, FOR REOPENING THESE PROCEEDINGS, AND FOR LEAVE TO INTERVENE THEREIN, AND FOR POSTPONEMENT OF CERTAIN PARTS OF THE ORDER—Filed Jan. 15, 1925

Comes now the Public Utilities Commission of the State of Kansas, and The Chamber of Commerce of Kansas City, Missouri, and pray that the above entitled proceedings may be reopened for the submission of further evidence by them, and for reargument, on the question of the justification and reasonableness and otherwise lawful character under sections 1, 2 and 3 of the Interstate Commerce Act, of the rates on horses that will result under this proceeding, from and to points in the states of Kansas, Colorado, Oklahoma, and southern Missouri, to and from Kansas City, St. Joseph and St. Louis, Missouri.

I

Your petitioner, the Public Utilities Commission of the State of Kansas, respectfully represents that it has an interest in the above entitled proceedings and desires to intervene and become a party to said proceedings and grounds of intervention shows:

[fol. 1287] That under the provisions of Section 66-143 R. S. of Kansas, 1922, this petitioner has power to intervene in any case pending before the Interstate Commerce Commission in which interstate rates affecting the interests

of Kansas shippers are involved and that this intervening petition is filed in pursuance of the authority above referred to and on behalf of the shippers interested in the State of Kansas. There are important horse and mule markets located at Kansas City, St. Joseph and St. Louis, Missouri, which markets are very important to the shippers of horses and mules in Kansas.

II

The Chamber of Commerce of Kansas City, Missouri, is a corporation duly organized and existing under the laws of the State of Missouri, not for profit, whose duty it is to look after railroad rates and charges on behalf of its members.

The Chamber of Commerce of Kansas City was the complainant in Chamber of Commerce versus A. & W. Ry. et al., I. C. C. Docket 13001, and was a party protestant in I. & S. Docket 1483, Horses and Mules from Kansas City, etc., but was not an intervener or a party in any of the other cases, therefore The Chamber of Commerce of Kansas City prays that it may be allowed to intervene in all of these cases except those to which it was a party, namely, I. C. C. Docket 13001 and I. & S. Docket 1483.

[fol. 1288]

III

These petitioners were aware of the pendency of these cases before the Interstate Commerce Commission, involving rates on horses and mules to and from Ft. Worth, but they were not aware that these cases seriously involved any rates on horses and mules to and from the markets of Kansas City, St. Joseph and St. Louis, from or to the states of Colorado, southern Missouri, Oklahoma and Kansas, otherwise they certainly would have been at the hearing and presented justification of those rates to such markets and opposed any increases.

It is a physical impossibility for any commercial organization or any state railway commission or board to follow closely all the cases before the Interstate Commerce Commission in which the rates affecting the city represented by such commercial organization or the rates affecting the state represented by such board or railway commission, may be indirectly or directly involved. It is a difficult task and calls for great labor to attend and follow and present

evidence in all of the important cases in which those issues are directly and seriously involved.

These petitioners were aware that many inconsistencies existed in the rates on horses and mules to and from Ft. Worth. In fact, in the complaint brought by The Chamber of Commerce of Kansas City (I. C. C. 13001) the measure of the rates from Kansas City to Ft. Worth were directly involved, and many comparisons were presented in that [fol. 1289] connection. It was the hope of the Kansas City Chamber, in its case, that the rates from Kansas City to Ft. Worth would be corrected, but it was far from the comprehension of either the Kansas Public Utilities Commission or The Chamber of Commerce of Kansas City, Missouri, that such wide sweeping advances in rates on horses and mules would be made from the State of Kansas or from Oklahoma or Colorado to Kansas City and other northern markets.

Conceding that correction is needed and should be made in the rates on horses and mules to Ft. Worth, Texas, from southwestern territory generally, at the same time no such revision in rates to the northern markets are needed or should be made as are contemplated in the order in these proceedings.

IV

It is the understanding of these petitioners that in the decision in these consolidated cases the Commission condemns rates on horses and mules for interstate application in the states of Kansas, Oklahoma, Arkansas, Texas common point territory, including the Dallas-Ft. Worth group, Louisiana west of the Mississippi River, Missouri south of the Missouri River, Colorado south of the Rock Island and Union Pacific through Limon to Denver, and east of the Colorado common points, and New Mexico east of the line of the Colorado and Southern; and prescribes a mileage basis of rates to apply on horses and mules between that territory and the markets of Ft. Worth, Texas, Wichita, Kansas, Kansas City, St. Joseph, St. Louis, Missouri, [fol. 1290] and Oklahoma City. In the order the carriers are prohibited from carrying lower rates from St. Louis to Texas or Louisiana west of the Mississippi River than apply for equal distances from Kansas City (page 9), and the carriers are prohibited from carrying lower rates from and to Wichita, Kansas City, St. Joseph, St. Louis or Okla-

homa City, to and from the territory involved, than are carried to and from Ft. Worth (pages 7 and 9 of Order).

The carriers are required to publish this adjustment to and from points where there has been a movement during the past two years (sheet 16 of Report).

To these petitioners this means only one thing, and that is that rates on horses and mules on this scale will be published throughout all this territory, and radical increases will result from or to Colorado, Kansas, southern Missouri and Oklahoma to or from St. Joseph, Kansas City and St. Louis.

These petitioners ask that the Order of the Interstate Commerce Commission in this case entered on November 10, 1924, be postponed as to rates from or to Kansas, Colorado, Oklahoma and southern Missouri to or from Kansas City, St. Joseph and St. Louis, Missouri, and the case reopened for the submittal of evidence to show the reasonableness of the present rates on horses from or to Colorado, Oklahoma, southern Missouri and Kansas to or from Kansas City, St. Joseph and St. Louis; for these petitioners contend that the present rates in effect are not less than [fol. 1291] reasonable and that the rates prescribed would result in charges excessive, unjust, unreasonable and in violation of sections 1, 2 and 3 of the Interstate Commerce Act, as will be shown herein.

V

There is attached hereto as Appendix "A" statement showing the present and proposed rates on horses and mules from and to Kansas, Colorado and Oklahoma points to and from Kansas City and St. Louis. The St. Joseph rates are generally the same as the Kansas City rates. The statement consists of 5 large sheets so that it will be seen that the points taken are well scattered and represent the territory very well. For instance take Manhattan, Kansas, on sheet 1; the present carload charge on a standard car of horses, from Manhattan to Kansas City is $45.50; it will be advanced to $61.00, while 115% of the present cattle rate would yield a charge per car of $49.50. Take Stockton, Kansas; the present charge for a carload of horses is $71.50 to Kansas City, which will be advanced to $101.00, while 115% of the cattle rate would yield $64.50. The distance Stockton to Kansas City is 296 miles. There

is a horse market at Omaha in competition with the horse market at Kansas City. The rate Stockton to Omaha is not affected in these proceedings; it presumably will stand at $102.50. There is an important horse market at Chicago. Those rates are not affected by this change; presumably the rates on horses out of this territory will stand at the present basis.

[fol. 1292] On page 2 of the statement, Cheyenne Wells, Colo., the Kansas City rate on horses will be increased from $93.00 to $126.50, while 115% of the cattle rate will be $112.50. This increase to Kansas City is in the face of a rate to Omaha to be let stand at $107.50. The rate resulting to St. Louis will be $6.50 above the Chicago rate, and the proposed Kansas City rate, as will be seen, will only be $23.50 less than the Chicago rate. The Chicago rates and the Omaha rates are not affected in this case.

The same situation is relatively true as to Oklahoma, as shown on pages 3 and 4 of the statement.

VI

In Appendix "B" we call attention to the result of this proposed readjustment in Kansas as compared with points across the line in the State of Nebraska. For example, the rate from Hanover, Kansas to Kansas City on horses is now $53.50, which will be increased to $80.50, while Odell, Nebr., nearby, just across the Kansas-Nebraska line, will stand at $57.50 to Kansas City. Omaha will retain its rate of $57.50 from Hanover.

From Norton, Kansas, both Kansas City and Omaha have rates on horses of $71.50. The rate to Kansas City will increase to $108.00, but the Omaha rate will stand, as will also the rate on horses from Republican, Nebr., nearby, to both Kansas City and Omaha, of $69.00 to Kansas City and $68.00 to Omaha

[fol. 1293] VII

Attention is directed to Appendix "C" attached, which shows the effect of this proposed scale out of southern Missouri to Kansas City and St. Louis. The Interstate Commerce Commission in the Dimmitt-Caudle-Smith Case (47 I. C. C. 287), prescribed rates on live stock to apply from southern Missouri to St. Louis. Horse rates were prescribed 120% of the cattle rates. The scale prescribed

in the Dimmitt-Caudle-Smith Case fits in well with rates applying out of southern Missouri to Kansas City, and the Dimmitt-Caudle-Smith scale was never extended to apply to the Kansas City market.

Appendix "C" is very plain and speaks for itself, so that discussion is hardly necessary.

Is it the intent of the Interstate Commerce Commission to undo the basis of rates laid down in the Dimmitt-Caudle-Smith Case and impose this southwestern scale for application interstate in southern Missouri?

VIII

It is a well known fact that traffic and transportation conditions in the State of Kansas and in southern Missouri are at least as good, if not better, than similar conditions in the states of Nebraska and South Dakota. It is not logical to apply a higher basis of live stock rates out of southern Missouri or Kansas to the markets of Kansas City, St. Joseph and St. Louis than apply out of the states of South Dakota or Nebraska, yet this is exactly what has [fol. 1294] been done, as will be readily seen by reference to sheet 9 of the decisions. For 100 miles the basis prescribed in this case is 24¢, with 22¢ under the northern Nebraska scale, and 23¢ under the South Dakota scale. For 300 miles the basis here prescribed is 44¢ against 35¢ under the northern Nebraska scale, and 37¢ under the South Dakota scale. A further comparison is shown below.

Horses and Mules, Carload

Miles	South Dakota Scale (A)	Northern Nebraska Scale (B)	Prescribed Scale This Case (C)
100	23	22	24
150	29.5	27.5	30
200	32	30.5	35
300	37	35	44
400	40.5	39	50
500	44	48	56

A—77 I. C. C. 451.
B—89 I. C. C. 444.
C—I. C. C. Dockets 12358 et al.

IX

Furthermore, the resulting adjustment from Kansas will create further discrimination by reason of the fact that to Wichita on state traffic this scale will not apply. The following will show an illustration of the situation:

Osage City, Kansas, to Kansas City is 100 miles, to Wichita, 113 miles; while the rates per 23,000 lb. carload [fol. 1295] of horses, 36 ft. car, are $38.50 and $45.50 respectively. On this scale the rate to Kansas City would be $55.20, or $9.70 higher than the rate to Wichita. Kansas City and Wichita being competing markets, how could a situation like this be continued?

X

The rates on horses to Kansas City and St. Louis from the states of Kansas, Colorado and Oklahoma are voluntary rates and have been continued for a long period of time. They were found reasonable in I. & S. Docket 555 (35 I. C. C. 497). They therefore must be regarded as reasonable and fully compensatory rates, or at least should not be advanced without specific justification.

The rates from southern Missouri to St. Louis are result of a decision of the Interstate Commerce Commission in the Dimmitt-Caudle-Smith Case (47 I. C. C. 287). The rates from southern Missouri to Kansas City are voluntary rates made by the carriers, existing over a long period of years.

Taking then as our criteria the ruling of the Interstate Commerce Commission in the Nebraska Case (89 I. C C. 444) and the South Dakota Case (77 I. C. C. 451) where they said that 115% of the rates on cattle should apply on horses and mules, and the Southeastern Live Stock Case (74 I. C. C. 419), where it was found that the rates on horses should be approximately the same percent of the rates on cattle, and the Dimmitt-Caudle-Smith Case (47 I. C. C. 287), where it was found the rates on horses should be [fol. 1296] 120% of the cattle rates; where, therefore, is there justification for the Commission to depart from this rule in the present case. The decision in this case is inconsistent with previous decisions of the Interstate Commerce Commission.

XI

It is our contention that if this scale prescribed by the Interstate Commerce Commission is to apply out of Kan-

sas, southern Missouri, Colorado and Oklahoma, to Ft. Worth, that the discrimination and prejudice which Ft. Worth has complained of as existing in the past, whereunder they paid class A rates out of this territory, or some similar higher basis, as against commodity rates to the markets of Kansas City, St. Joseph and St. Louis, will be composed entirely, and that there is no need of, nor reason for, increasing the rates from or to Colorado, Oklahoma, southern Missouri or Kansas to or from Kansas City, St. Joseph or St. Louis; and we venture the assertion that no further cause for complaint will be heard from the Ft. Worth interests. The basis of our contention in this regard is the fact that after these horses are drawn from Colorado, Oklahoma and Kansas to Kansas City, St. Joseph or St. Louis, to get into Ft. Worth territory they must pay an [fol. 1297] additional freight rate much higher than the amount that must be paid by Ft. Worth, for example, in getting into New Orleans, Houston, Shreveport or other points in that territory.

XII

We further call attention to the fact that these complaints, involving rates on horses and mules to and from Ft. Worth, are mainly reparation cases. In an effort to have the Ft. Worth rates condemned as unreasonable, so as to secure reparation, the complainants evidently have pressed every point, no matter how remote. It is not necessary that the rates from or to Kansas, Oklahoma, Colorado and southern Missouri, to or from Kansas City, St. Joseph and St. Louis, be increased to compose the Ft. Worth situation. No advances should be allowed in such rates without a full hearing upon the reasonableness thereof.

Wherefore, these petitioners pray these proceedings may be reopened, and that their intervention, as outlined herein may be allowed, and that they be given an opportunity to present evidence and present and cross-examine witnesses, and be treated as parties to these proceedings.

These petitioners also pray that the order in these cases entered by this Commission on November 10, 1924, may be postponed as to rates from or to Kansas, southern Missouri, Oklahoma and Colorado, to or from Kansas City, St. Joseph and St. Louis, Missouri, and that these proceedings [fol. 1298] may be reopened and set for hearing at Kansas

City, Missouri, on the question of the reasonableness of the application of the proposed scale on horses and mules from or to the states of Kansas, Colorado, Oklahoma and southern Missouri, to or from Kansas City, St. Joseph and St. Louis, Missouri.

If this prayer is granted these petitioners will submit evidence to show:

(A) That the rates proposed are unjust and unreasonable, unjustly discriminatory and unduly prejudicial, in violation of section 1, 2 and 3 of the Interstate Commerce Act, in that the charges resulting will be unreasonable and excessive and entirely too high; that rates from the State of Kansas, particularly the northern portion thereof, will be thrown out of line with corresponding rates from nearby points in Nebraska, and rates from Colorado will be thrown out of line with corresponding rates from nearby points in the northern portion thereof; that markets will be thrown out of line with competing markets. For example, the markets of St. Joseph and Kansas City will be thrown out of line with Omaha.

(B) The traffic and transportation conditions surrounding the movement of horses and mules out of the State of Kansas to the markets of St. Joseph, Kansas City and St. Louis, are much more favorable than conditions surrounding the movement of horses to the market of Ft. Worth. The same is true as concerning the movement of [fol. 1299] horses out of Oklahoma and out of Colorado. Greater traffic density is encountered in the movement to Kansas City. The movement of the traffic is at less cost per unit, and there is no reason for applying the same scale to or from Kansas City, St. Joseph and St. Louis as applies to or from Ft. Worth, Texas.

(C) That traffic and transportation conditions in southern Missouri and Kansas are just as favorable, if not indeed much more favorable, than in Nebraska or South Dakota, and certainly no higher basis of rates should be proposed on horses out of Kansas and southern Missouri than out of Nebraska or South Dakota.

(D) That the situation of which Ft. Worth complains will be and can be composed without increase in the rates

on horses out of Kansas, Oklahoma, southern Missouri and Colorado to Kansas City, St. Joseph and St. Louis.

Wherefore, these petitioners pray that their prayer may be granted.

Respectfully submitted, Kansas Public Utilities Commission, by A. M. Corp, Rate Expert and Statistician. The Chamber of Commerce of Kansas City, Missouri, by J. H. Tedrow, Transportation Commissioner.

Dated at Kansas City, Mo., January 12, 1925.

(Here follow Appendix "A" and Appendix "B", side folios 1300 to 1306, inclusive.)

[fol. 1300]

APPENDIX "A"

Statement Showing Effect of Mileage Scale from Kansas, Colorado, Oklahoma and Texas

From	To	Miles & route	Present basis			Prescribed basis		Over KC per 23,000 lb. car		115% of cattle rates	
			Cattle rates	Horse rates	Horses per 23,000 lb. car	Horse rates	Horses per 23,000 lb. car	Present	Prescribed	Rate	Per 23,000 lb. car
Marysville, Kans.	K. C.	149 N	20.5	....	$48.50	30	$69.00	.....	.....	23.5	$54.00
	St. L.	427 NS	37	....	97.50	54.5	125.50	$49.00	$56.50	42.5	98.00
	Chgo.	600 NF	49	....	122.00						
	Oma.	159 N	19.5	22.5	52.00						
Manhattan, Kans.	K. C.	119 N	18.5	....	45.50	26	61.00	.....	.....	21.5	49.50
	St. L.	397 NS	36.5	....	94.00	51	117.50	48.50	56.50	42	96.50
	Chgo.	570 NF	48.5	....	118.50						
	Oma.	215 N	27.5	....	107.50						
Emporia, Kans.	K. C.	113 F	17	....	45.50	26	61.60	.....	.....	19.5	45.00
	St. L.	391 FS	31	....	95.50	51	117.50	50.00	56.50	35.5	81.50
	Chgo.	564 F	43.5	....	119.50						
	Oma.	309 FT	40.5	....	107.50						
Parsons, Kans.	K. C.	137 A	19	....	50.50	29	66.50	.....	.....	22	50.50
	St. L.	387 A	36	....	101.00	50	115.00	50.50	48.50	41.5	95.50
	Chgo.	588 AF	48	....	128.00						
	Oma.	333 AT	33.5	....	84.00						
Belleville, Kans.	K. C.	203 M	22	....	61.00	36	83.00	.....	.....	25.5	58.50
	St. L.	481 MS	41.5	....	102.50	57	131.00	41.50	48.00	47.5	109.50
	Chgo.	638 MU	50	....	127.00						
	Oma.	150 M	38.5	....	88.00						
Abilene, Kans.	K. C.	163 N	22	....	53.50	32	73.50	.....	.....	25.5	58.50
	St. L.	441 NS	40	....	101.50	54.5	125.50	48.00	52.00	46	106.00
	Chgo.	614 NF	50	....	125.50						
	Oma.	359 NT	38.5	....	83.50						

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APPENDIX "A"—Continued

Statement Showing Effect of Mileage Scale from Kansas, Colorado, Oklahoma and Texas

From	To	Miles & route	Present basis: Cattle rates	Present basis: Horse rates	Present basis: Horses per 23,000 lb. car	Prescribed basis: Horse rates	Prescribed basis: Horses per 23,000 lb. car	Over KC per 23,000 lb. car: Present	Over KC per 23,000 lb. car: Prescribed	115% of cattle rates: Rate	115% of cattle rates: Per 23,000 lb. car
Newton, Kans.	K. C.	186 F	22	....	66.00	34	78.00	.....	.....	25.5	58.50
	St. L.	464 FS	38.5	.....	118.00	56	129.00	52.00	51.00	49	112.50
	Chgo.	637 F	50	.....	144.50						
	Oma.	382 FT	36	.....	97.50						
Arkansas City, Kans.	K. C.	244 F	25	....	69.50	39	89.50	.....	.....	29	66.50
	St. L.	515 P	38.5	....	120.00	57.5	132.50	50.50	43.00	49	112.50
	Chgo.	795 F	50	....	147.00						
	Oma.	440 FT	38.5	....	100.50						
Concordia, Kans.	K. C.	202 P	22	....	67.00	36	83.00	.....	.....	25.5	58.50
	St. L.	485 P	41.5	....	114.50	56	129.00	47.50	46.00	47.5	109.50
	Chgo.	653 PF	50	....	141.00						
	Oma.	198 T	30	34.5	79.50						
Stockton, Kans.	K. C.	296 P	24.5	....	71.50	44	101.00	.....	.....	28	64.50
	St. L.	579 P	44.5	....	123.00	61.5	141.50	51.50	40.50	51	117.50
	Chgo.	747 PF	50	....	149.50						
	Oma.	407 P	36.5	....	102.50						
Russell, Kans.	K. C.	263 N	25	....	61.00	42	96.50	.....	.....	29	66.50
	St. L.	541 NS	45	....	107.50	59	135.50	46.50	39.00	52	119.50
	Chgo.	714 NF	50	....	132.00						
	Oma.	359 N	41.5	....	89.00						
Kinsley, Kans.	K. C.	303 P	29.3	....	69.00	46	106.00	.....	.....	34	78.00
	St. L.	581 FS	47	....	113.50	61.5	141.50	44.50	35.50	54	124.00
	Chgo.	754 F	51	....	137.50						
	Oma.	499 FT	52.5	....	131.00						

Belvidere, Kans.	K. C.	326	F	29.5	....	65.50	47	108.00	.....	.....	34	78.00
	St. L.	604	FS	46.5	....	111.00	63	145.00	45.50	37.00	53.5	123.00
	Chgo.	777	F	51	....	135.50						
	Oma.	522	FT	52.5	....	127.50						
[fol. 1301]												
Colby, Kans.	K. C.	408	M	33.5	....	84.50	52	119.50	.....	.....	38.5	88.50
	St. L.	681	MS	49	....	127.00	66	152.00	42.50	32.50	56.5	130.00
	Chgo.	854	MF	53	....	150.00						
	Oma.	348	M	46.5	....	107.50						
Scott City, Kans.	K. C.	387	F	33.5	....	92.00	50	115.00	.....	.....	38.5	88.50
	St. L.	665	FS	48.5	....	138.50	65	149.50	46.50	34.50	56	129.00
	Chgo.	838	F	52.5	....	165.00						
	Oma.	666	FT	46.5	....	118.50						
Garden City, Kans.	K. C.	389	F	33.5	....	83.50	50	115.00	.....	.....	38.5	88.50
	St. L.	667	FS	48.5	....	125.30	65	149.50	42.00	34.50	56	129.00
	Chgo.	840	F	52.5	....	150.00						
	Oma.	664	FT.	56.5	....	145.50						
Liberal, Kans.	K. C.	413	M	32.5	....	76.00	52	119.50	.....	.....	37.5	86.50
	St. L.	691	MS	47	....	119.50	66	152.00	43.50	32.50	54	124.00
	Chgo.	864	MF	51	....	144.00						
	Oma.	566	M	45	....	101.50						
Goodland, Kans.	K. C.	439	M	36	....	85.50	53.5	123.00	.....	.....	41.5	95.50
	St. L.	691	MS	49	....	128.50	66	152.00	43.00	29.00	56.5	130.00
	Chgo.	876	MU	53	....	150.00						
	Oma.	384	M	36	....	85.50						
Sharon Spgs., Kans.	K. C.	430	N	36.5	....	89.00	53.5	123.00	.....	.....	42	96.50
	St. L.	718	NS	49	....	128.50	67	154.00	39.50	31.00	56.5	130.00
	Chgo.	881	NF	53	....	150.00						
	Oma.	525	N	46.5	....	107.50						
Coolidge, Kans.	K. C.	456	F	37	....	89.00	55	126.50	.....	.....	42.5	98.00
	St. L.	734	FS	48.5	....	128.50	68	156.50	39.50	30.00	56	129.00
	Chgo.	907	F	52.5	....	150.00						
	Oma.	652	FT	60.5	....	151.00						
Florence, Kans.	K. C.	158	F	21	....	53.50	31	71.50	.....	.....	24	55.00
	St. L.	436	FS	38.5	....	101.50	54.5	125.50	48.00	54.00	49	112.50
	Chgo.	609	F	50	....	125.50						
	Oma.	354	FT	44.5	....	115.50						

APPENDIX "A"—Continued

Statement Showing Effect of Mileage Scale from Kansas, Colorado, Oklahoma and Texas

From	To	Miles & route	Present basis			Prescribed basis		Over KC per 23,000 lb. car		115% of cattle rates	
			Cattle rates	Horse rates	Horses per 23,000 lb. car	Horse rates	Horses per 23,000 lb. car	Present	Prescribed	Rate	Per 23,000 lb. car
Herington, Kans.	K. C.	149 M	20.5	....	53.50	30	69.00	.....	.....	23.5	54.00
	St. L.	427 MS	38	....	107.50	54.5	125.50	54.00	56.50	43.5	100.00
	Chgo.	600 MF	49	....	134.00						
	Oma.	303 M	33.5	....	87.00						
Cheyenne Wells, Colo.	K. C.	463 N	38.5	....	93.00	55	126.50	.....	.....	49	112.50
	St. L.	741 NS	49	....	128.50	68	156.50	35.50	30.00	56.5	130.00
	Chgo.	914 NF	53	....	150.00						
	Oma.	558 N	46.5	....	107.50						
Hugo, Colo.	K. C.	535 N	39.5	....	95.50	59	135.50	.....	.....	45.5	104.50
	St. L.	813 NS	50	....	128.50	71	163.50	33.00	28.00	57.5	132.50
	Chgo.	986 NF	55.5	....	150.00						
	Oma.	664 N	46.5	....	107.50						
Rocky Ford, Colo.	K. C.	552 F	42	....	97.00	60	138.00	.....	.....	48.5	111.50
	St. L.	830 FS	50	....	128.50	72	165.50	31.50	27.50	57.5	132.50
	Chgo.	1003 F	57	....	150.00						
	Oma.	748 FT	67.5	....	159.00						
Eads, Colo.	K. C.	511 P	39.5	....	104.00	57.5	132.50	.....	.....	45.5	104.50
	St. L.	780 P	50	....	142.00	70	161.00	38.00	28.50	57.5	132.50
	Chgo.	962 PF	54.5	....	165.00						
	Oma.	717 P	46.5	....	118.50						
[fol. 1302]											
Denver, Colo.	K. C.	635 M	46.5	....	117.50	64	147.00	.....	.....	53.5	123.00
	St. L.	913 MS	50	....	142.00	75	172.50	24.50	25.50	57.5	132.50
	Chgo.	1048 MU	58.5	....	165.00						
	Oma.	560 N	46.5	.....	117.50						

Limon, Colo.	K. C.	546	M	39.5	....	97.50	59	135.50	.....	.....	45.5	104.50
	St. L.	824	MS	50	....	128.50	71	163.50	31.00	28.00	57.5	132.50
	Chgo.	997	MF	55.5	....	150.00						
	Oma.	491	M	46.5	....	107.50						
Tip Top, Colo.	K. C.	593	M	45	....	104.00	61.5	141.50	.....	.....	52	119.50
	St. L.	871	MS	50	....	128.50	73	168.00	24.50	26.50	57.5	132.50
	Chgo.	1044	MF	58.5	....	150.00						
	Oma.	539	M	45	....	104.00						
Sheridan Lake, Colo.	K. C.	484	P	38.5	....	101.00	56	129.00	.....	.....	49	112.50
	St. L.	752	P	49	....	142.00	69	158.50	41.00	29.50	56.5	130.00
	Chgo.	935	PF	53	....	165.00						
	Oma.	689	P	46.5	....	118.50						
Ordway, Colo.	K. C.	572	P	42	....	106.00	60	138.00	.....	.....	48.5	111.50
	St. L.	849	P	50	....	142.00	72	165.50	36.00	27.50	57.5	132.50
	Chgo.	1023	PF	57	....	165.00						
	Oma.	717	P	46.5	....	118.50						
La Jaunta, Colo.	K. C.	542	F	40	....	97.00	59	135.50	.....	.....	46	106.00
	St. L.	820	FS	50	....	128.50	71	163.50	31.50	28.00	57.5	132.50
	Chgo.	993	F	56	....	150.00						
	Oma.	738	FT	63.5	....	159.00						
Granada, Colo.	K. C.	472	F	38.5	....	93.00	55	125.50	.....	.....	49	112.50
	St. L.	750	FS	49	....	128.50	68	156.50	35.50	31.00	56.5	130.00
	Chgo.	923	F	53	....	150.00						
	Oma.	668	FT	62	....	155.00						
Claremore, Okla.	K. C.	236	P	28	....	77.00	39	89.50	.....	.....	32	73.50
	St. L.	476	P	41.5	....	107.50	56	129.00	30.50	39.50	47.5	109.50
	Chgo.	687	PF	50	....	134.00						
	Oma.	452	P	42	....	106.00						
Vinita, Okla.	K. C.	189	A	25	....	75.00	34	78.00	.....	.....	29	66.50
	St. L.	360	O	38.5	....	107.50	43	110.50	32.50	32.50	49	112.50
	Chgo.	640	AF	50	....	134.00						
	Oma.	385	AT	39.5	....	108.50						
Atoka, Okla.	K. C.	360	A	43.5	....	119.50	48	110.50	.....	.....	50	115.00
	St. L.	609	A	50	....	154.50	63	145.00	35.00	34.50	57.5	132.50
	Chgo.	811	AF	58.5	....	181.00						
	Oma.	556	AT	67	....	181.50						

APPENDIX "A"—Continued

Statement Showing Effect of Mileage Scale from Kansas, Colorado, Oklahoma and Texas

From	To	Miles & route	Present basis			Prescribed basis		Over KC per 23,000 lb. car		115% of cattle rates	
			Cattle rates	Horse rates	Horses per 23,000 lb. car	Horse rates	Horses per 23,000 lb. car	Present	Prescribed	Rate	Per 23,000 lb. car
Pawnee, Okla	K. C.	315 F	28	....	70.00	46	106.00	.....	.....	32	73.50
	St. L.	593 FS	41.5	....	102.50	61.5	141.50	32.50	35.50	47.5	109.50
	Chgo.	766 F	50	....	127.00						
	Oma.	511 FT	51.5	....	132.00						
Hugo, Okla	K. C.	477 O	47	....	128.00	56	129.00	.....	.....	54	124.00
	St. L.	560 O	50	....	161.00	60	138.00	33.00	9.00	57.5	132.50
	Chgo.	844 OF	67	....	214.00						
	Oma.	673 OT	62.5	....	161.50						
Chandler, Okla	K. C.	332 O	42	....	105.50	47	108.00	.....	.....	43.5	11.50
	St. L.	495 O	50	....	138.50	56	129.00	33.00	21.00	57.5	132.50
	Chgo.	779 OF	56	....	165.00						
	Oma.	528 OT	50	....	132.00						
[fol. 1303]											
Oklahoma City, Okla	K. C.	344 A	43	....	113.50	48	110.50	.....	.....	49.5	114.00
	St. L.	543 O	50	....	147.00	59	135.50	33.50	35.00	57.5	132.50
	Chgo.	795 AF	56	....	173.50						
	Oma.	540 AT	48.5	....	140.50						
Tulsa, Okla	K. C.	257 F	28	....	77.00	40	92.00	.....	.....	32	73.50
	St. L.	424 O	42	....	113.00	52	119.50	36.00	27.50	48.5	111.50
	Chgo.	708 F	50	....	140.00						
	Oma.	453 FT	42.5	....	110.50						
Guthrie, Okla	K. C.	333 F	43	....	101.50	47	108.00	.....	.....	49.5	114.00
	St. L.	611 FS	50	....	132.00	63	145.00	32.50	37.00	57.5	132.50
	Chgo.	784 F	56	....	156.00						
	Oma.	529 FT	66.5	....	163.50						

Blackwell, Okla.	K. C.	274 F	28	....	70.00	42	96.50	.....	.....	32	73.50
	St. L.	552 FS	41.5	....	106.00	60	138.00	36.00	41.50	47.5	109.50
	Chgo.	725 F	50	....	130.00						
	Oma.	470 FT	51.5	....	132.00						
Enid, Okla.	K. C.	319 M	33	....	96.00	46	106.00	.....	.....	38	87.50
	St. L.	545 O	45.5	....	129.50	59	135.50	33.50	29.50	52.5	121.00
	Chgo.	770 MF	50	....	156.00						
	Oma.	515 MT	40	....	123.00						
Hobart, Okla.	K. C.	485 M	46.5	....	125.00	56	129.00	.....	.....	53.5	123.00
	St. L.	691 O	50.5	....	158.50	66	152.00	33.50	23.00	58	133.50
	Chgo.	936 MF	60	....	185.50						
	Oma.	681 MT	50	....	152.00						
Lawton, Okla.	K. C.	467 M	47.5	....	124.50	55	126.50	.....	.....	54.5	125.50
	St. L.	631 O	50	....	158.00	64	147.00	33.50	20.50	57.5	132.50
	Chgo.	915 MX	59.5	....	184.50						
	Oma.	663 MT	50	....	151.00						
Holdenville, Okla.	K. C.	358 O	43	....	113.50	48	110.50	.....	.....	49.5	114.00
	St. L.	320 O	50	....	147.00	46	106.00	33.50	X 4.50	57.5	132.50
	Chgo.	809 OF	56	....	173.50						
	Oma.	554 OT	48.5	....	140.50						
[fol. 1304]											
Sweetwater, Tex.	K. C.	656 E	51	78.5	180.50	65	149.50	.....	.....	58.5	134.50
	St. L.	934 ES	57	78.5	180.50	76	175.00	.....	25.50	63.5	146.00
	Chgo.	1107 EF	68.5	97	223.00						
	Oma.	852 ET	59.5	Comb.	242.50						

St. Louis–New Orleans now $138.00, will be $154.10.
X—Under Kansas City.

53—670

Routes:

A	— MK&T
B	— MK&T—Sherman—T&P
C	— MK&T—Denison—SP
D	— MK&T—Waxahatchie—T&BV
E	— CRI&P—Wichita—KCM&O
F	— AT&SF
G	— KCS
H	— KCS—Shreveport—LR&N
K	— KCS—Shreveport—LR&N—Alexandria—CRI&P
J	— KCS—Shreveport—VS&P
M	— CRI&P
N	— UP
O	— Frisco
P	— MP
R	— I&GN—MK&T
T	— CB&Q
V	— T&P—MK&T
W	— WV—Katy

Routes:

NS	— UP—Wabash
NF	— UP—Santa Fe
FS	— Santa Fe—Wabash
OF	— Frisco—Santa Fe
AS	— Katy—Wabash
FT	— Santa Fe—CB&Q
AT	— Katy—CB&Q
AF	— Katy—Santa Fe
MS	— Rock Island—Wabash
MU	— Rock Island—CM&STP.
NT	— UP—CB&Q
PF	— Mo. Pac.—Santa Fe
MF	— Rock Island—Santa Fe
MS	— Rock Island—Wabash
MT	— Rock Island—CB&Q
OT	— Frisco—CB&Q
ET	— KCM&O—Rock Island—CB&Q
ES	— KCM&O—Rock Island—Wabash
EF	— KCM&O—Rock Island—Santa Fe
MX	— Frisco—C&A

Tariff Authority:

Boyd's	I. C. C.	A—1427	
Leland's	"	1570, 1566,	1678
AT&SF	"	9916	
CRI&P	"	C—11172	
KCS	"	4345	
MK&T	"	A—5093	
Mo. Pac.	"	A—5768,	A—6341
St.L.—SF	"	8095,	8128
UP	"	3421	

APPENDIX "B"

Statement Showing Effect of Scale Ordered from Kansas as Against No Changes from Nebraska

From	To	Miles & route	Present Horses 23000 Lb.	Proposed Rate	Proposed Per 23000 Lb. car	Over Kansas City Present	Over Kansas City Prescribed
St. Francis, Kans	Kansas City	467 A	87.00	55	126.50	.....	.....
	St. Louis	739 A	121.00	68	156.50	34.00	30.00
	Chicago	842 A	146.50	.....	.....	.....	.....
	Omaha	363 A	87.00				
Orleans, Nebr	Kansas City	333 A	79.50				
	St. Louis	607 A	113.50				
	Chicago	709 A	137.50				
	Omaha	229 A	68.00				
Norton, Kans	Kansas City	332 B	71.50	47	108.00		
	St. Louis	609 C	116.00	63	145.00	44.50	37.00
	Chicago	747 A	140.50				
	Omaha	267 A	71.50				
Republican, Nebr	Kansas City	321 A	69.00				
	St. Louis	596 A	113.50				
	Chicago	709 A	137.50				
	Omaha	228 A	68.50				
Warwick, Kans	Kansas City	237 D	67.00	39	89.50		
	St. Louis	520 D	118.50	57.5	132.50	51.50	43.00
	Chicago	688 E	145.50				
	Omaha	348 D	68.00				
Superior, Nebr	Kansas City	245 D	69.00				
	St. Louis	528 D	107.50				
	Chicago	647 F	132.00				
	Omaha	183 F	62.00				
Hanover, Kans	Kansas City	197 A	53.50	35	80.50		
	St. Louis	472 A	97.50	55	126.50	44.00	46.00
	Chicago	620 A	122.00				
	Omaha	140 A	57.50				
Odell, Nebr	Kansas City	182 A	57.50				
	St. Louis	457 A	95.50				
	Chicago	606 A	119.50				
	Omaha	126 A	52.00				

Routes:
A—CB&Q
B—CRI&P
C—CRI&P-Wabash
D—Mo. Pac.
E—Mo. Pac.-Santa Fe
F—C&NW

Tariff Authority:
CB&Q—I. C. C. 15641, 16055
Mo. Pac. I. C. C. A-6341

[fol. 1306]

APPENDIX C

Effect of Proposed Rates on Horses and Mules from South Missouri Points to Kansas City and St. Louis

	To Kansas City						To St. Louis				
		Present rate		Proposed rate				Present rate		Proposed rate	
From	Miles	Per Cwt.	Per 23,000 lb. car	Per Cwt.	Per 23,000 lb. car	120% of cattle	Miles	Per Cwt.	Per 23,000 lb. car	Per Cwt.	Per 23,000 lb. car
Springfield, Mo.	192	29.5	$67.85	35	$80.50	31	241	31	$71.30	39	$89.70
Joplin, Mo.	154	....	53.50	31	71.30	23	333	36	82.80	47	108.10
Lebanon, Mo.	249	36.5	80.80	39	89.70	33.5	182	27.5	63.25	34	78.20

X—120% of cattle rates.
Frisco ICC 8085—8128.

[fol. 1307] Interstate Commerce Commission

No. 12358

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al.

v.

DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY et al.

No. 13619

ROSS BROTHERS HORSE AND MULE COMPANY et al.

v.

UNION PACIFIC RAILROAD COMPANY et al.

No. 13627

BURNETT-YOUNT HORSE & MULE COMPANY et al.

v.

ABILENE & SOUTHERN RAILWAY COMPANY et al.

No. 11018

WICHITA BOARD OF COMMERCE et al.

v.

DIRECTOR GENERAL, AS AGENT ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

Investigation and Suspension Docket No. 1483

Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and other Points.

No. 13001

CHAMBER OF COMMERCE OF KANSAS CITY, MO.,

v.

ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

Portions of Fourth-Section Applications Nos. 461, 462, 621, 673, and 678

ORDER—March 16, 1925

Upon further consideration of the record in the above-entitled proceedings, of petition of complainants for re-

hearing and modification of the report entered herein on November 10, 1924, and of the joint petition of the Public [fol. 1308] Utilities Commission of the State of Kansas and the Chamber of Commerce of Kansas City, Mo., for further hearing and for reargument;

It is ordered that the said petition of complainants for rehearing be, and it is hereby, denied.

And it is further ordered that the order entered in Dockets Nos. 12358, 13619, and 13627, on November 10, 1924, as modified by order of January 12, 1925, to the extent that it affects rates from or to points in Kansas, Colorado, and southern Missouri, respectively, to or from Wichita, Kans., Kansas City, St. Joseph, and St. Louis, Mo., be, and it is hereby, postponed until the further order of the commission, and that the said cases be, and they are hereby, reopened for further hearing with respect to the reasonableness, lawfulness, and propriety of the interstate rates on horses and mules, in carloads, between said points.

It is further ordered that the said orders entered in all of the above-entitled proceedings on November 10, 1924, as modified by the said order of January 12, 1925, except to the extent that they are affected by the order of postponement in the next preceding paragraph, be, and they are hereby, further modified so as to become effective on May 20, 1925, instead of on April 20, 1925.

And it is further ordered, that in all other respects the said orders entered herein on November 10, 1924, shall remain in full force and effect.

By the Commission.

George B. McGinty, Secretary. [SEAL.]

[fol. 1309] EXHIBIT "RR"

H. W. H.

[fol. 1310] Before the Interstate Commerce Commission.

Horse and Mule Rates in the Southwest, 1924

Dockets 12358-13627

TEXAS LIVE STOCK SHIPPERS PROTECTIVE LEAGUE, et al., Complainants

vs.

DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY, et al., Defendants

BURNETT-YOUNT HORSE & MULE COMPANY, et al., Complainants

vs.

ABILENE & SOUTHERN RAILWAY COMPANY, et al., Defendants

PETITION TO MODIFY—Filed July 17, 1928

Come now the complainants in the above styled proceedings, to whom reparation has been awarded as hereinafter shown, and respectfully petitions the Commission to modify its findings and orders therein, and in support of said petition respectfully shows:

I

That on November 10, 1924, and February 6, 1928, the Commission rendered its reports in these proceedings containing its findings of facts and conclusions, to wit: "that the rates on horses and mules, in car loads, between Fort Worth, Texas and points in Kansas and Missouri were unreasonable to the extent that they exceeded the aggregate of intermediate rates * * *" and awarded reparation to that basis, with interest, to specified complainants, who are the petitioners herein.

[fol. 1311] II

That certain shipments of horses and mules, as shown in Sec. IV, moved from points beyond and through Topeka,

Kans., Kansas City and St. Joseph, Mo. to Ft. Worth, Texas, on which there were no through rates legally applicable, the through rates charged being the sum of the rates to and from the Kansas and Missouri junctions, the factor charged for the haul south thereof being separate from and independent of all other factors and in excess of the sum of the intermediates from said junctions.

III

That the rates charged for the haul south of said junctions exceeded the sum of the intermediates therefrom to the same extent and in the same manner as on shipments originating at said junctions of other Kansas and Missouri points on which reparation was awarded.

IV

That shipments moved as follows to Ft. Worth, Texas:

Point of origin	Junction	Route Line	Exhibit	Witness
South Omaha, Nebr.,	Kansas City,	M K T.	18	White.
"	"	"	A 86	"
Crandic, Iowa,	"	"	A 85	Henderson.
South Omaha, Nebr.,	"	"	A 91	Hicks
"	"	"	12	Rominger.
Grand Island, Nebr.,	"	"	A 90	Beasley.
"	Topeka, Kans.,	Rock Island.	18	White.
Benkleman, Nebr.,	Kansas City,	M-K-T	21	Hicks.
Trenton, Nebr.,	"	"	21	"
Cambridge, Nebr.,	"	"	21	"
[fol. 1312]				
Culbertson, Nebr.,	Kansas City,	Santa Fe	18	White.
Holbrook, Nebr.,	"	M-K-T	A-86	"
Malta, Mont.,	"	Santa Fe	22	Hicks.
"	St. Joseph, Mo.,	Rock Island.	A-91	Hicks.
Crawford, Nebr.,	Kansas City,	Santa Fe	A-91	"
Hastings, Nebr.,	"	"	A-91	"
Baker, Mont.,	"	M-K-T	A-91	"

(Exhibit 12, Docket 13627; others, Docket 12358.)

V

That the rates from the Kansas and Missouri junctions, named in Sec. IV, to Ft. Worth, Texas, as charged, exceeded the sum of the intermediate rates published in the following tariffs (I. C. C. numbers):

A., T. & S. F. 7521, 9593, 2355.
C., R. I. & P., C-10576, C-10901, C-11172.

M.-K.-T., A-3657, A-4647, A-4953, A-5093, in connection with rates published in S. W. L. 1048, 1226, 1358, 1480, 1590 and Texas Line's 89, 100, 48, and 174.

VI

That the bases of the charges assessed on said shipments were: From South Omaha, Nebr., to Kansas City, Mo., the arbitrary published in S. W. L. tariff I. C. C. 1299 and reissues; and from the other points named in Sec. IV, the local rates of the individual lines to the junction named, plused therefrom a rate or sum of rates exceeding the lowest aggregate of the intermediates, via the route of movement, contemporaneously maintained. See illustrations following:

[fol. 1313] Illustrations

Car EPSW 15052, Witness Rominger, Exhibit 12, record page 93, Docket 13627, from South Omaha, Nebr., to Ft. Worth, Texas, Feb'y 16, 1920 (M.-K.-T. freight bill attached).

As charged:

South Omaha to Kansas City, per car	$ 27.50	Note 1.
Kansas City to Ft. Worth, 23,000 lbs. @ 90¢	207.00	" 2.
Through	$234.50	

Note 1—Item 12, S. W. L. tariff, I. C. C. 1299.
Note 2—Class "A" rate, S. W. L. tariff, I. C. C. 1261. Minimum weight, S. W. L. tariff, I. C. C. 1333.

Lower combination from Kansas City, Mo.:

Kansas City to Beagle, Kans., per car	$24.75	Note 3.
Beagle, Kans., to Colbert, Okla., per car	81.55	" 3.
Colbert, Okla., to Denison, Tex., 23,000 lbs. @ 9¢	20.70	" 4.
Denison, Tex., to Ft. Worth, Tex., 22,000 lbs. @ 22½¢	49.50	" 5.
Through	$176.50	
Excess south of Kansas City	30.50	

Note 3—M.-K.-T. tariff, I. C. C. A-4647.
Note 4—S. W. L. tariffs, I. C. C. 1226 and 1333.
Note 5—Texas Line's tariff, I. C. C. 65.

There being no through rate, South Omaha to Ft. Worth, application of the combination rule published in Agent Morris' tariff I. C. C. U. S. 1, provided for in item 48, S. W. L. tariff I. C. C. 1299, to the five factors shown above, results in a through charge of $179.50 and an excess of $55.00 over the amount charged, $234.50.

[fol. 1314]

VII

That the revenue accruing from the rates found unreasonable, as shown in Sec. I, accrued entirely to, and was retained wholly by the lines named in Sec. IV performing to haul south of the Kansas and Missouri junctions named in Sec. IV.

VIII

That the charges assessed from the intermediate Kansas and Missouri Junctions named in Sec. IV, to Ft. Worth, Texas, based on the rates exceeding the sum of the intermediates therefrom, although shipments originated at points beyond, was in violation of the 4th section the same as though the shipments had originated at the Kansas and Missouri junctions.

IX

That there were no through rates legally applicable to horses and mules from any of the points of origin shown in Sec. IV and, therefore, the lowest combination of intermediate rates, applicable via route of movement, the factors treated as provided in Agent Morris' tariff I. C. C. U. S. 1, is legally applicable.

X

That various shipments of horses and mules, involved in these proceedings, originated at National Stock Yards, Ills. (see Exhibits 18 and A-91, Witnesses White and Hicks, Record 68 and 568, respectively, destined Ft. Worth, Texas, moving via M.-K.-T. Lines, on which the charges assessed were based on the rate or sum of rates applicable from St. Louis, Mo., as published in M.-K.-T. and S. W. L. tariffs named in Sec. V, being killed from National Stock Yards,

Ills., as a M.-K.-T. station) (See M.-K.-T. freight bill, car B. O. 12454, attached.)

[fol. 1315] Illustration

Car B. O. 12454, October 12, 1923. (Attached freight bill, M.-K.-T. R. R., National Stock Yards.)

As charged: (36-ft. car.) From St. Louis, Mo.

To Russell Creek, Okla., per car	$107.50	Note 1.
Ft. Worth, Texas, 23,000 lbs. @ 69½¢	159.85	" 2.
Through	$267.35	

Note 1—Index $600, M.-K.-T. tariff, I. C. C. A-5093
Note 2—S. W. L. tariff, I. C. C. 1596 and 1616.

Correct rate 120 cents, S. W. L. I. C. C. 1586, same minimum weight, S. W. L. tariff, I. C. C. 1616, through	$276.00	
(From St. Louis, Mo.) Undercharge	5.65	

Lower combination from St. Louis, Mo.,

To Colbert, Okla., per car	$165.00	Note 3.
Denison, Texas, 23,000 lbs. @ 11¢	25.30	Note 4.
Ft. Worth, Texas, 23,000 lbs. @ 27½¢	63.25	Note 5.
Through	$253.55	

Combination less than amount charged $13.80

XI

That, according to Territorial Directory, S. W. L. I. C. C. 1665 and M.-K.-T. tariffs named in Sec. V, also M.-K.-T. official list of Stations, I. C. C. 224, National Stock Yards, Ills., is not a M.-K.-T. station and there were no through rates via that line, except that, being within the switchings limits of St. Louis, Mo., the St. Louis rate is applicable. (The first factor shown in Sec. X being from St. Louis, Mo. and not National Stock Yards, Ills.). Provided the shipment originated at National Stock Yards, Ills., on the

M.-K.-T. R. R. as distinguished from and a different station than St. Louis, Mo. then, there being no through rate provided, the lowest combination, the factors treated as provided in Agent Kelly's tariff I. C. C. U. S. 1, is legally applicable.

[fol. 1316] Wherefore petitioners pray that the Commission upon further consideration of the records in these proceedings and of the facts set forth herein, modify its orders, named in Sec. I, (and clarify as to shipments from National Stock Yards, Ills.), to provide, if not now so provided, that shipments originating at the points named in Secs. IV and X, on which charges were assessed as shown in Secs. V, VI and X, in violation of the 4th section (intermediates clause) of the Act to Regulate Commerce, as found by the Commission, may be accorded the same just and reasonable rates were awarded by the Commission, through reparation, on shipments originating at Kansas and Missouri points and that such other and further order or orders be made as may be deemed proper by the Commission in the premises.

Respectfully submitted, B. D. Pelton, for Petitioners.

Dated at Ft. Worth, Texas, June 27, 1928.

[fol. 1317] EXHIBIT "SS"

H.W.H.

[fol. 1318] [Stamp:] Exceptions must be filed with Commission and copies served so as to reach opposing counsel on or before Dec. 10, 1925.

Interstate Commerce Commission

No 12358[1].

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[1] This report also embraces No. 13619, Ross Brothers Horse & Mule Company et al. v. Union Pacific Railroad Company et al., and No. 13627, Burnett-Yount Horse & Mule Company et al. v. Abilene & Southern Railway Company et al.

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY, ET AL.

Submitted. Decided

1. Maximum reasonable rates prescribed for the interstate transportation of horses and mules, in carloads, between Kansas and Missouri markets, including East St. Louis and National Stock Yards, Ill., and points in Kansas and in Missouri south of the Missouri River. Orders entered in connection with the original report herein, Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479 and in Rates on Horses and Mules in the Southwest, 102 I. C. C. 87, modified accordingly.

A. A. Brown for Kansas Public Service Commission.

J. H. Tedrow for Chamber of Commerce of Kansas City, Mo.

W. H. Fitzpatrick for St. Joseph Stock Yards Company and St. Joseph Horse & Mule Company.

A. E. Bazan for Wichita Chamber of Commerce.

M. C. Lysle for Memphis Freight Bureau.

J. H. Mercer and A. M. Corp for Kansas Live Stock Association.

B. D. Pelton for complainants.

C. S. Burg, A. B. Enoch, M. J. Dowlin, M. A. Rawlings, J. C. LaCoste, Robert Thompson, J. A. Lynch, H. H. Larimore, F. B. Clark, M. G. Roberts, H. A. Scandrett, F. E. Andrews, Harvey Allen, Robert N. Nash, and H. P. Norden for Defendants.

REPORT ON FURTHER HEARING PROPOSED BY EXAMINER J. F. ESHELMAN—Filed Nov. 18, 1925

In the three instant reopened proceedings, the original decision in which was embraced in Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479, the Commission prescribed a scale of rates on horses and mules, in carloads, for distances of 100 miles and over for application between Fort Worth, Tex., and points in a defined territory including Kansas, that part of Missouri south of the Missouri

River, and southeastern Colorado. Based on a finding of undue prejudice to Fort Worth and undue preference of other markets including Wichita, Kans., Kansas City, St. [fol. 1319] Joseph, and St. Louis, Mo., the Commission required the establishment and maintenance between Fort Worth and points in the defined territory of rates not in excess, distance considered, of the rates contemporaneously maintained between the same stations and any of the preferred markets. The order applied only to rates having interstate application. On March 16, 1925, upon the joint petition of the Public Utilities Commission of the State of Kansas and the Chamber of Commerce of Kansas City, Mo., the commission reopened these cases for further hearing with respect to the reasonableness, lawfulness, and propriety of the interstate rates on horses and mules, in carloads, from or to points in Kansas, Colorado, and southern Missouri embraced in the defined territory respectively to or from Wichita, Kansas City, St. Joseph, and St. Louis. Except as between these points, rates on the basis prescribed became effective on or before May 20, 1925. The hearing with respect to the propriety of the rates was held at Topeka, Kans., jointly with the Kansas Public Utilities Commission, which had before it an application of the carriers for permission to make the scale of rates prescribed for interstate use applicable also to Kansas intrastate traffic. On January 12, 1925, the Commission reopened these cases with respect to reparation, and hearing was had thereon at Fort Worth. A separate proposed report covering the reparation features will be issued. For convenience we will refer to the prescribed basis of rates, sometimes designated the southwestern horse scale, as the proposed rates.

Propriety of the Rates.

Petitioners and the Kansas and Missouri markets named, herein collectively termed petitioners, seek the retention of the existing basis of rates which is generally lower than the southwestern scale. They contend that horses and mules cannot stand increased freight charges; that the southwestern scale is inappropriate and unreasonable for application in Kansas, Missouri and Colorado; and that [fol. 1320] its extension into the states named would result in undue prejudice to the Kansas and Missouri markets and

in unjust discrimination against intrastate traffic. Defendants take the position that the existing rates are unreasonably low for the service required. They ask the establishment of the southwestern scale throughout the territory. Complainants were represented at the Topeka hearing but introduced no further evidence. On brief they ask for the same basis of rates to and from Fort Worth as may here be found reasonable for Kansas, Southern Missouri, and southeastern Colorado.

The territory involved in these proceedings originates a large number of horses and mules. They move to the primary markets here concerned for distribution or for shipment to other markets or to the Atlantic Seaboard for export. The St. Louis market, by which is meant the National Stock Yards at East St. Louis, Ill., is the largest horse and mule market in the United States. Until the last year or two, when displaced by Fort Worth, Kansas City has ranked second among the western markets in the receipt of horses and mules. In 1924 Kansas furnished over 13,000 of the 36,000 horses and mules marketed at Kansas City; Colorado furnished nearly 4,000, and Missouri supplied 11,575. Horses and mules are not usually produced in numbers by individual farms, but many farmers in this territory produce a few each. Buyers concentrate the animals at local stables or yards until a carload has been secured, and ship them to other buyers at the larger centers or direct to the markets.

The present rates on horses and mules to the markets of St. Louis, Kansas City, St. Joseph and Wichita have been established mainly with relation to the contemporaneous cattle rates. Those from Missouri to East St. Louis and National Stock Yards are substantially on the basis prescribed in Dimmitt-Caudle-Smith Live Stock Commission Co. v. R. R. Co., 47 I. C. C. 287, as affected by the general increases and reductions. In that case the Commission [fol. 1321] prescribed rates on horses and mules at 120 per cent of the beef cattle rates. From Missouri stations south of the main line of the Chicago, Rock Island & Pacific from St. Louis to Kansas City rates were provided on the basis of 105 per cent of the north Missouri rate for distances over 100 miles to and including 200 miles, and 10 per cent over the base rates for all distances over 200 miles. The scale did not extend beyond 350 miles. To Kansas City the pres-

ent rates from Kansas points are on the basis of the Kansas statutory maximum freight rates which became effective May 29, 1909, as affected by the general increases of 1918 and 1920 and the reductions of 1922. To Wichita the rates from the Kansas points are in general on the same level as to Kansas City, but in some instances are on the basis of the scale prescribed in Nebraska Livestock Case, 89 I. C. C. 444. From Kansas and Colorado origins the rates to Kansas City and St. Joseph are generally the same. The proposed rates are in general approximately 25 per cent higher than the general level of those involved.

1. Reasonableness of the Proposed Rates

With respect to the reasonableness of the proposed rates for application in Kansas, southern Missouri, and southeastern Colorado, the record contains considerable evidence dealing with the diminishing receipts of horses and mules at markets and the declining values thereof, comparisons of the proposed rates with those prescribed by the Commission for application in the same or adjacent territory, and comparisons of traffic density in such territories.

The receipts of horses and mules at the principal markets in the United States have declined sharply from the peak years during the world war and have in several instances reached levels substantially below the pre-war levels. Within the last year or two for which figures are given conditions have improved slightly at some markets. For the years 1900 to 1923, inclusive, the average receipts per year [fol. 1322] at 9 principal markets were 475,420 head. In 1921 receipts declined to 186,000 head and increased to 302,000 in 1923. There has been a heavy falling off of receipts at the St. Louis, Chicago, and Kansas City markets, both as compared with the peak years and with the pre-war period. The number handled on the St. Joseph market has steadily declined from 5951 in 1919 to 136 in 1924. This does not include animals unloaded but not marketed at St. Joseph. The receipts of horses and mules at Kansas City in recent years is substantially below the pre-war level. In 1924 the receipts numbered 36,288 as compared with 73,445 in 1910.

The number of horses on farms in the United States during the period 1900 to 1924, inclusive, reached its peak in 1918, when the number was 21,555,000. The number has

steadily declined to the 1924 figure of 18,263,000. This is the lowest number on farms since 1906.

The value per head of horses on the farm reached its highest level, $111.46, in 1911. Since that time the value has declined with little fluctuation to the 1924 figure of $64.41. During the same 24-year period the number of mules on the farm has in general steadily increased to 5,436,000. The value per head has been less constant. It increased from $51.41 in 1900 to $148.42 in 1920 and declined to $84.20 in 1924.

Department of Agriculture figures note a decline in the weighted average farm price of horses and mules as of the 15th of the month, for the United States, from $146 in 1910 to $82 in 1923. Other data of record indicate that the average monthly farm price per head of horses and mules for the 15th of each month of the year 1923 was $58 for Kansas and $57 for Missouri. Of the United States, only Oklahoma and Wyoming had lower averages. The figures were $50 and $54, respectively.

[fol. 1323] The average prices for the month of January of each year for the years 1919 to 1925, as taken from the books of the St. Joseph Horse & Mule Company, show a steady decline in the case of horses from $110 in 1919 to $45 in 1925. The corresponding prices for mules were $208 and $116 per head. The latter figure is slightly above the low price of $106 for 1923. In 1922 St. Joseph was shipping to the southern markets, the southwest and to Boston, New York, Philadelphia, and other points east, but at present is shipping to southern points only.

Rates under the southwestern scale are substantially higher as a whole than rates under scales now in effect in Kansas, Missouri, Nebraska, and from South Dakota points to markets on the Missouri and Mississippi Rivers. Attached to the report as Appendix "A" is a comparison of the rates for representative distances under the southwestern scale with the scale rates applicable in northern and southern Missouri, and with the scales prescribed in Nebraska Live Stock Case, 89 I. C. C. 444, and in South Dakota R. R. Commissioners v. C. & N. W. Ry. Co., 77 I. C. C. 451. Other scales applicable intrastate in Nebraska and interstate between Colorado and Kansas are included. With the exception of the last named, all of the scales shown are

substantially below the level of the southwestern scale. The Missouri scales are those prescribed in Dimmitt-Caudle-Smith Live Stock Commission Co. v. R. R. Co., supra, as affected by the general increases of 1918 and 1920 and general reductions of 1922. The South Dakota and Nebraska cases dealt almost exclusively with live stock other than horses and mules, and in each case rates on this traffic were made 115 per cent of the beef cattle rates. The South Dakota scale was prescribed for application from points in South Dakota to markets and intermediate points in Minnesota, Wisconsin, Illinois, Iowa, Missouri and Nebraska. From South Dakota origins west of the Missouri River differentials were prescribed approximately 125 per cent of [fol. 1324] the base rates for the distances traversed west of the river. The Nebraska scales were prescribed under a finding of undue prejudice for application to the Missouri River markets, Sioux City, Iowa, to Kansas City, inclusive. The northern Nebraska scale was made applicable from points on the line of the Chicago & North Western extending from Scribner via Dakota Junction to Wyoming and South Dakota and from other points in Nebraska north of Albion, Humphrey, Scribner and Oakland. The southern Nebraska scale was made applicable from the balance of the state. These rates were not prescribed as reasonable maxima.

Complainant contends that transportation conditions in the territory involved are such as to entitle it to a lower basis of rates than applies in the southwest. Data of record with respect to freight traffic density establishes that transportation conditions in Kansas are as favorable as those in southern Missouri and Nebraska. For the year ended December 31, 1923, the traffic density in Kansas for class 1 roads was 887,812 net ton miles per mile of road. For the Nebraska lines other than the Union Pacific the net ton miles per mile of road for the same year were 759,495, and including the Union Pacific were 1,089,883. For the same period net ton miles per mile of road in Missouri north of the Missouri River were 1,740,517 and for the lines south of the River were 1,117,598. Included in the latter figure is the traffic of the higher density main lines of the Missouri Pacific and Rock Island between Kansas City and St. Louis. If the division of the state be made immediately south of the main line of the Rock Island between Kansas

City and St. Louis, the traffic density of the northern section would become 1,452,116 net ton miles per mile of road as compared with 896,896 net ton miles for the southern section. The parties admit and the record bears out that freight traffic conditions in northern Missouri are more comparable to those in Iowa and Illinois than to the conditions in Kansas and Nebraska.

[fol. 1325] 2. Undue Prejudice

If the southwestern scale were made applicable from Kansas stations to Kansas City and St. Joseph, it is highly probable, unless the rates were correspondingly increased to Omaha, Nebr., that horse and mule traffic from those origins would be diverted to the latter market. For example, Belleville, in northern Kansas, on the line of the Rock Island, now takes a rate of $67.10 per 36-foot car to Kansas City and Omaha. Under the southwestern scale the charge would be increased to $82.80 per car to Kansas City. From Kipling, Colo., on the Rock Island, the rate to Kansas City is now 41 cents, and under the proposed basis would be increased to 57.5 cents. Otis, Colo., on the Chicago, Burlington & Quincy, north of Kipling and substantially the same distance from Kansas City, would retain its present rate of 41.75 cents to that market. The instance cited is typical of the disparity that would result in the rates to the markets concerned from cross-country origins respectively within and outside the southwestern-scale territory. The application of the southwestern scale from intermediate points in Kansas to Kansas City would also probably result in increasing rates thereto from Nebraska points beyond to obviate fourth section violations, and in the extension of the area in which the lower Missouri River markets would be at a disadvantage as compared with Omaha. As an illustration, the rate from Reserve, Kans., immediately south of the Nebraska boundary on the Missouri Pacific would, under the proposed basis, be increased from $37 to $55.20. The latter rate would exceed the rate from Stella, Nebr., just over the boundary on the same line of railroad. The present rate from Stella to Kansas City is $49.45.

The further claim is made by one of the interveners that the application of the southwestern scale in Kansas and southern Missouri would result in unjust discrimination

against intrastate commerce. The ground for the claim is that under such a scale higher charges would result from [fol. 1326] Kansas points to Kansas destinations than for a similar service from interstate points of origin to the same destinations. No attempt was made to show that the shipment of horses and mules from interstate points to Kansas destinations would affect the ability of Kansas shippers to market their animals at the same or other markets as advantageously as at present.

Strict application of any scale of rates on horses and mules to Kansas City and St. Joseph would disrupt the lower Missouri River group relationship whereunder those markets enjoy equal rates from points in Kansas and Colorado, and would create a situation not desired by either of them. In Nebraska Live Stock Case, supra, in prescribing rates to St. Joseph and Kansas City we permitted the carriers to average the distances to the two markets named and to apply common rates based thereon to both points.

Petitioners assert that the maintenance of the present basis of rates in Kansas, Colorado, and Missouri would not prejudice Fort Worth. They base this conclusion upon the inactivity of the Fort Worth interests at the Topeka hearing and upon the fact that receipts of horses and mules at the Fort Worth market has improved to a greater relative extent than at the Kansas and Missouri markets. In the original report we found that the ability of the Kansas and Missouri markets to draw horses and mules from points in the territory involved and to market them at southwestern destinations at rates substantially lower than those available to and from Fort Worth for similar distances was unduly prejudicial to Fort Worth and preferential of the markets named. The maintenance of the southwestern horse scale from and to points in Oklahoma and Arkansas to and from the named markets in Kansas and Missouri and the retention of the existing basis of rates in the latter states would create unwarranted disparities in the rates from border points. For example, from Arkansas City, Kansas, to Kansas City the present rate is $69.30 per 36-foot car. Under the southwestern scale the rate from Newkirk, Okla., [fol. 1327] 12 miles beyond, is $92 per car. From Caney, Kans., 188 miles from Kansas City, the present rate is $57.20. Under the southwestern scale the rate from Owen, Oklahoma two miles farther distant, is $78.20.

Remunerativeness of Existing Rates.

Defendants contend that for the service rendered in the transportation of horses and mules the rates thereon are unduly low and do not contribute their fair share to the revenues of the roads. The nature of live stock traffic and its transportation characteristics have been adverted to in numerous cases and need not be repeated here in detail. See National Live Stock Shippers' League v. A. T. & S. F. Ry. Co., 63 I.C.C. 107, 113-115, and cases there cited. In brief the traffic requires a relatively expensive service. Live stock must move in expedited trains and be handled with care and despatch. It is loaded, unloaded, and placed in suitable pens at public stockyards by the carrier without other charge than the line-haul rate. It must be stopped in transit in compliance with the 28-36 hour law and with federal and state quarantine regulations. The empty movement of stock cars is great. According to an exhibit of record the percentage of empty to loaded haul on the Atchison, Topeka & Santa Fe for the years 1914, 1915 and 1916 ranged from 65 to 69 per cent in the case of stock cars as compared with 13 to 32 per cent for box cars, 22 to 28 per cent for furniture cars, and 29 to 33 per cent for refrigerator cars. During the month of October, 1924, the Missouri Pacific moved stock cars into and out of St. Louis as follows: Loaded in, 300,147 cars; loaded out, 10,039 cars; empty in, 1,998 cars; and empty out 252,096 cars. For the Missouri Pacific system during the same month the percentage of empty to loaded stock car miles north or east bound was 11.7 per cent. South or west bound the percentage was 553.73 per cent of the loaded car miles. Claim payments for loss and damage in the handling of live stock, including [fol. 1328] horses and mules, are large, and are greater than on carload freight generally. For the years 1917 to 1923, inclusive the average claim payments for loss and damage in the handling of live stock on the Santa Fe system were $1.53 per car or 13.65 cents per ton as compared with claim payments on all carload freight except livestock of $1.37 per car or 4.55 cents per ton. The total-movement of horses and mules over the Rock Island system for the year 1924 was 2,628 cars. The total revenue obtained on these cars was $177,698 or an average of $67.65 per car. Claims were paid on these shipments amounting to $13,100, which amounted to 7.4 per cent of the revenue obtained, or

an average of $5 per car. Although detailed figures are lacking, the record warrants the inference that the ratio of claim payments to revenue is somewhat higher in the case of horses and mules than in the case of live stock generally. The percentage of caretakers accompanying horse and mule shipments is stated to be much larger than of those accompanying shipments of ordinary livestock. At regular tariff rates the value of the transportation furnished caretakers accompanying shipments of horses and mules on the Missouri Pacific in 1923 averaged $9.75 for each caretaker. In 1924, the average loading of all cars of horses and mules handled by this carrier was 11.77 tons. This appears representative.

In support of their claim that the existing rates on horses and mules in the territory involved are unduly low and that the southwestern scale would furnish a proper basis defendants introduced numerous comparisons of the per car charges and car mile earnings thereunder with those under the corresponding rates on various other commodities. A compilation therefrom showing representative comparisons under the rates to Kansas City is attached to this report as Appendix B. The commodities with which comparison is made load more heavily than do horses and mules. Except in a few instances the charges and earnings thereon greatly [fol. 1329] exceed those for horses and mules. Although the earnings on other commodities are not necessarily determinative as to the proper rates on horses and mules, it appears that the present rates on the latter are on a low basis.

Defendants contend that the cattle rates in the territory involved are on a low level and do not furnish a proper basis upon which to predicate rates on horses and mules. Cattle, sheep, and hogs move in much heavier volume than do horses and mules. They are shipped largely by the farmers who produce them, while the freight on horses and mules is usually paid in the first instance by the buyer or dealer. There is no competition between horses and mules and edible live stock. Representative rates on horses and mules and live stock in Missouri are contained in Appendix C hereto attached. Throughout this report rates specified in cents apply per 100 pounds, and those in dollars apply per 36-foot car or for a minimum weight of 23,000 pounds.

The low character of the 30.5-cent rate from Kansas City

to National Stock Yards, originally established under the scale fixed in the Dimmitt-Caudle-Smith Case, supra, is also indicated by the fact that, after deducting absorptions in connection with handling at stock yards and for bridge toll, the rate pays the Missouri Pacific 19.5 cents per car mile. On traffic received at Kansas City from other lines, due to absorption of switching charge, the rate would yield the carrier named car-mile revenue of 17 cents. The present rates on horses and mules from origins in the territory involved are not well aligned considering the differences in distance to the different markets. For example, the above-mentioned rate of 30.5 cents from Kansas City to National Stock Yards is 58 per cent of the rate of 52 cents to Chicago for a haul 62 per cent of the distance. Again, any properly graded scale that would approximate the general level of rates from Kansas points to Kansas City would work many reductions to St. Louis and if applied to Chicago would [fol. 1330] substantially cut existing rates to that market. Conversely, a properly graded scale that would approximate the rates from interior Kansas points to Chicago would substantially increase the rates to the Missouri markets.

Conclusions.

The record establishes that the rates in Kansas and Southern Missouri might properly be somewhat less than those which would result from the application of the southwestern scale, and that the portion of Missouri north of the main line of the Rock Island between Kansas and St. Louis should properly take the same basis of rates as northern Missouri. The latter section is a part of a territory of higher traffic density including Iowa and northern Illinois. The record also indicates that the existing rates in Kansas in many instances are lower than under any scale of rates found reasonable by this Commission, and that all things considered they are not sufficiently remunerative. It further justifies the conclusion that the level of rates on horses and mules to the Missouri River markets should not be higher from Kansas origins than from Nebraska and South Dakota points. The Nebraska and South Dakota cases dealt only incidentally with the rates on horses and mules. Moreover, the Nebraska rates were not prescribed as maximum reasonable rates but to remove discrimination. The

record furnishes no satisfactory basis for determining the rates between Colorado and the markets concerned.

Recommendations.

The Commission should find that, for the future, maximum reasonable rates for application to the interstate transportation of horses and mules, in carloads, (1) between markets within and points within territory "A," as described in Appendix D to this report, will be rates not in excess of those made on the basis of Scale "A" set forth in said Appendix D; and (2) between markets within and points within territory "B", as described in Appendix D to [fol. 1331] this report, will be rates not in excess of those made on the basis of Scale "B" set forth in said Appendix D. Distances for the application of the foregoing rates, should be computed over the shortest possible routes by existing connections for interchange of carload traffic, but such routes need not embrace more than the lines or parts of lines of three carriers, except in cases where through routes comprising more than that number of carriers are now in effect. Lines under common ownership should be considered as a single line in applying the rates prescribed, and where a portion of the same railroad is used more than once in computing a distance it will be counted as a separate line each time it is used.

For application between territories "A" and "B" rates should be computed on the basis of scale "A" for the entire distance plus the differences between the scale "A" and scale "B" rates for the distance traversed in territory "B", such latter distance to be determined by the actual distance in territory "B" over the route fixing the basic rate. However, in no case should the through rates exceed those that might be determined over some other route where, by reason of the differential being less, the total through charge would be less.

Permission should be given defendants to average the distances to Kansas City and St. Joseph and to apply to both a common rate based thereon.

Fourth section relief similar to that granted in Horses and Mules in the Southwest, 1924, supra, and in Rates on Horses and Mules in the Southwest, 102 I.C.C. 87, should be accorded.

Defendants should not content themselves with the publication of the scales and basis for making rates, but should publish specific rates on the bases herein prescribed. They should refrain from meeting by routes that are excessively circuitous or as to which the rates prescribed are less than reasonably compensatory the rates in effect over the direct lines. If they should disregard this requirement, the Commission should enter such further orders as might be found necessary.

[fols. 1332-1378] Properly to relate the rate bases herein set forth to those prescribed in Horse and Mule Rates in the Southwest, 1924, supra, and Rates on Horses and Mules in the Southwest, supra, the Commission should modify the orders entered in those cases so as to provide for the making of rates between points in different rated territories on the basis of the scale for the lower-rated territory for the entire distance plus the appropriate differentials for the hauls in higher-rated territories. This will necessitate the provision of rates for distances of less than 100 miles in connection with the southwestern scale. All portions of the state of Colorado should be excluded from the territory within which the rates were prescribed in Horse and Mule Rates in the Southwest, 1924, supra.

If the establishment of rates on the bases herein set forth, in connection with the retention of rates on the bases prescribed by the Commission in the Nebraska and South Dakota cases, results in unlawful situations, the Commission should give consideration to the prescription of rates which will meet the requirements of law.

The commission should enter appropriate orders.

[fol. 1379] EXHIBIT "TT"

H. W. H.

* * * * * * *

[fol. 1380] Interstate Commerce Commission

No. 12358

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al.

v.

JAMES C. DAVIS, DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY, et al.

No. 11018

WICHITA BOARD OF COMMERCE et al.

v.

DIRECTOR GENERAL, AS AGENT, ALEXANDRIA & WESTERN RAILWAY COMPANY, et al.

Investigation and Suspension Docket No. 1483

Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and Other Points

No. 13001

CHAMBER OF COMMERCE OF KANSAS CITY, MO.,

v.

ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

No. 13619

ROSS BROTHERS HORSE & MULE COMPANY et al.

v.

UNION PACIFIC RAILROAD COMPANY et al.

No. 13627

BURNETT-YOUNT HORSE & MULE COMPANY et al.

v.

ABILENE & SOUTHERN RAILWAY COMPANY et al.

Investigation and Suspension Docket No. 2389

Rates on Horses and Mules To. From, or Between Southwestern Points

ORDER—Jan. 4, 1926

Upon further consideration of the records in the above-entitled proceedings, and good cause appearing therefor:

It is ordered that these proceedings be, and they are hereby, reopened for further hearing, at such times and places as the commission may hereafter direct, with respect to the reasonableness, lawfulness and propriety of the rates and minimum weights applicable in connection therewith.

By the Commission.

George B. McGinty, Secretary. (Seal)

[fol. 1381] Interstate Commerce Commission

No. 12358

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al.

v.

JAMES C. DAVIS, DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY, et al.

No. 11018

WICHITA BOARD OF COMMERCE et al.

v.

DIRECTOR GENERAL, AS AGENT, ALEXANDRIA & WESTERN RAILWAY COMPANY, et al.

Investigation and Suspension Docket No. 1483

Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and Other Points.

No. 13001

CHAMBER OF COMMERCE OF KANSAS CITY, MO.,

v.

ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

No. 13619

ROSS BROTHERS HORSE & MULE COMPANY et al.

v.

UNION PACIFIC RAILROAD COMPANY et al.

No. 13627

BURNETT-YOUNT HORSE & MULE COMPANY et al.

v.

ABILENE & SOUTHERN RAILWAY COMPANY et al.

Investigation and Suspension Docket No. 2389

Rates on Horses and Mules, To, From, or Between Southwestern Points

ORDER—Feb. 6, 1928.

It appearing that by order dated March 16, 1925, Dockets No. 12358, 13619, and 13627 were reopened for further hearing with respect to the reasonableness, lawfulness, and propriety of the interstate rates on horses and mules, in carloads, from or to points in Kansas, Colorado, and southern Missouri, respectively, to or from Wichita, Kans., Kansas City, St. Joseph, and St. Louis, Mo.;

And it further appearing that by order dated January 4, 1926, the above-entitled proceedings were reopened generally for further hearing with respect to the reasonableness, lawfulness and propriety of the rates and minimum weights applicable in connection therewith:

It is ordered that the said orders of March 16, 1925, and January 4, 1926, be and they are hereby, modified so as to provide for the reopening of these proceedings for further hearing with respect to the reasonableness, lawfulness, and propriety of the rates and minimum weights for the future only.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1382] EXHIBIT "UU"

H. W. H.

[fol. 1383] Interstate Commerce Commission

No. 12268

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF SOUTH DAKOTA

vs.

CHICAGO & NORTHWESTERN RAILWAY COMPANY et al.

No. 13273

NEBRASKA LIVESTOCK CASE.

In the Matter of Interstate and Intrastate Rates for the Transportation of Ordinary Livestock, in Carloads, from Points in Nebraska to Omaha and South Omaha, Nebr., in Their Relation to Rates on the Same Commodity, in Carloads, from Points in Nebraska to Kansas City and St. Joseph, Mo., and Sioux City, Iowa

ORDER—Jan. 4, 1926.

Upon further consideration of the records in the above-entitled proceedings, and good cause appearing therefor;

It is ordered that these proceedings be, and they are hereby, reopened for further hearing, at such times and places as the Commission may hereafter direct, with respect to the reasonableness, lawfulness and propriety of the rates and minimum weights applicable to the transportation of horses and mules, in carloads.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1384] EXHIBIT "VV"

H. W. H.

Interstate Commerce Commission,

Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Notice, dated April 13, 1928

Report on Further Hearing Proposed by Robert S. Simons, Examiner

Exceptions to Examiner's Proposed Report on Behalf of Southwestern Carriers filed December 16, 1929

Notice dated January 7, 1930

Order of the Commission entered February 1, 1932

Notice dated February 11, 1932

Notice, dated May 9, 1932

Brief on behalf of Southwestern Carriers upon Rehearing, filed August 1, 1932, and

Report of the Commission filed July 24, 1933, in Cases Nos. 12358, Texas Livestock Shippers Protective League et al. v. Director General, as Agent, Abilene & Southern Railway Company et al.; 11018, Wichita Board of Commerce et al. v. Director General, as Agent, Alexandria & Western Railway Company et al.; 13001, Chamber of Commerce of Kansas City, Mo. v. Alexandria & Western Railway Company et al.; 13619, Ross Brothers Horse & Mule Company et al. v. Union Pacific Railway Company et al.; 13627, Burnett-Yount Horse & Mule Company et al. v. Abilene & Southern Railway Company et al.; 13273, Nebraska Live Stock Case; 12268, Board of Railroad Com-
[fols. 1385-1387] missioners of State of South Dakota v. Chicago & North Western Railway Company et al; Investigation and Suspension Docket No. 2389, Rates on Horses and Mules to, from or between Southwestern Points; Investigation and Suspension Docket No. 1483, Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and Other Points; and Fourth-Section Applications Nos. 461, 462, 621, 673, and 678, the originals of which are now on file and of record in the office of this Commission.

I further certify that copies of said report of July 24, 1933, were served upon the Washington representatives of the defendants and on all other parties on August 5, 1933.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 16th day of March, A. D. 1934.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 1388] Interstate Commerce Commission

Western Horse and Mule Rates

[Stamp:] Exceptions must be filed with Commission and copies served so as to reach opposing counsel on or before Nov. 29, 1929.

No. 12358[1]

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al.

v.

DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY, et al.

Submitted ——. Decided ——

Scale of rates recommended for application on horses, mules, burros and asses, in carloads, to, from, and between points in Southwestern and Western Trunk Line territories. Former reports in Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479, Rates on Horses and Mules in the Southwest, 102 I. C. C. 87, Nebraska Livestock case, 89 I. C. C. 444, and South Dakota Railroad Commissioners v. C. & N. W. Ry. Co., 77 I. C. C. 451, modified.

[1]This report also embraces No. 11018, Wichita Board of Commerce et al. v. Director General, as Agent, Alexandria & Western Railway Co. et al.; No. 13001, Chamber of Commerce of Kansas City, Mo. v. Alexandria & Western Railway Co. et al.; No. 13619, Ross Brothers Horse & Mule Company et al. v. Union Pacific Railroad Company et al.; No. 13627, Burnett-Yount Horse & Mule Company et al. v. Abilene & Southern Railway Company et al.; I. & S. No. 2389, Rates on Horses and Mules to, from or between Southwestern Points; I. & S. No. 1484, Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and Other Points; No. 13273, Nebraska Live Stock Case; No. 12268, Board of Railroad Commissioners of State of South Dakota v. Chicago & North Western Railway Company et al.; and Fourth-Section Applications Nos. 461, 462, 621, 673 and 678.

B. D. Pelton for Texas Livestock Shippers Protective League.

J. H. Tedrow, Transportation Commissioner, for Chamber of Commerce of Kansas City, Mo.

W. H. Fitzpatrick for Chamber of Commerce of St. Louis, Mo.; St. Joseph Stock Yards Co., and St. Joseph Horse and Mule Co.

A. E. Bazen and A. M. Corp for Wichita Chamber of Commerce.

G. Y. Horton for Wichita Union Stock Yards Co.

W. M. Dyer and A. M. Corp for C. B. Team Mule Co. and Wichita Horse & Mule Commission Co.

J. H. Mercer and A. M. Corp for Kansas Live Stock Association.

H. C. Lysle for Memphis Freight Bureau.

A. A. Brown for Kansas Public Service Commission.

Raymond L. Dillman, Assistant Attorney General, S. W. W. Carr, and D. L. Kelley for Board of Railroad Commissioners of South Dakota.

C. A. Ross for Nebraska State Railway Commission.

A. B. Enoch, C. S. Burg, M. G. Roberts, Robt. Thompson, H. H. Larimore, J. H. Barwise, Jr., R. S. Outlaw, H. C. Barron, and E. A. Boyd for the Southwestern Mines.

[fol. 1389] M. M. Joyce, R. G. Hagman, J. M. Souby, J. N. Davis, Walter McFarland and P. F. Gault for Western Trunk Line Carriers.

Del W. Harrington for Southern Pacific Company.

M. J. Dowlin for Chicago, Rock Island & Gulf Ry. Co.

S. C. Inkley for St. Louis-San Francisco Ry. Co.

Fred L. Wallace and F. A. Swenson for Ft. Worth & Denver City Railway Company; Wichita Valley Railway Company, and Colorado & Southern Railway Company.

F. B. Clark for Missouri Pacific Railroad Company.

M. A. Ralings for Chicago, Rock Island & Pacific Railway Company.

C. H. Tinn for Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

J. E. Flansburg for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

John Q. Dier for Colorado & Southern Railway Company.

Henry Christianson for Chicago, Burlington & Quincy Railroad Company.

REPORT ON FURTHER HEARING PROPOSED BY ROBERT S. SIMONS, EXAMINER—Filed Nov. 8, 1929

Foreword

In view of the fact that the cases included on the further hearing in this proceeding now include rates from the states of South Dakota and Nebraska, and as this proceeding also includes rates from Kansas and southern Missouri, which section heretofore has not been considered as a part of the southwest, the title of the consolidated cases covered by this report has been changed to Western Horse & Mule Rates, from the former title of Horse & Mule Rates in the Southwest.

Historical

In 1921 the complaint in (the main docket of these consolidated cases) No. 12358, was filed by the Texas Live Stock Shippers Protective League of Fort Worth, Texas, and other Texas interests. It was therein alleged, inter alia, that the rates on horses, mules, burros, and asses, between Texas points and other points in southwestern and western territories, were unreasonable, unduly prejudicial and in violation of the fourth section; more particularly, that the rates to and from Fort Worth were unreasonable and unduly prejudicial, as compared with those to and [fol. 1390] from other primary markets, such as Kansas City, St. Louis and Wichita. At that time the south-bound rates to Texas points from Kansas and Missouri were on a class A basis. As specific commodity rates were in effect to Kansas City, St. Louis and Wichita, this resulted in Fort Worth shippers paying considerably higher rates both on their inbound and outbound shipments than applied to and from other competing markets. Dockets Nos. 13619 and 13627, involving similar allegations, were set for hearing with No. 12358, and at the same time No. 11018, Wichita Board of Commerce v. Director General, 60 I. C. C. 536, I. & S. No. 1483, Horses and Mules from Kansas City, Mo., 69 I. C. C. 97, and No. 13001, Kansas City Chamber of Com-

merce v. A. & W. Ry. Co., 89 I. C. C. 22, were reopened for further consideration and consolidation with No. 12358. There was also assigned for hearing portions of fourth section applications Nos. 461, 462, 621, 673, and 678. In November, 1924, the Commission rendered its decision, reported under the title of Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479. In this decision the Commission prescribed a scale of rates on horses and mules (which term will be understood to include burros and asses), for application between Fort Worth and points in Kansas, Oklahoma and Arkansas, Texas common-point territory, that part of Missouri south of the Missouri River, that part of Louisiana west of the Mississippi River, and that part of Colorado on and south of the lines of the Chicago, Rock Island & Pacific and the Union Pacific and east of the main line of the Colorado & Southern extending south from Denver through Pueblo and Trinidad, and that part of New Mexico on and east of the Colorado & Southern. Except as indicated in the report, fourth section relief was denied. The carriers affected were authorized to publish these rates, which we will call the Southwestern Horse and Mule Scale, via all routes (subject to certain fourth section restrictions) between the markets of Fort Worth, Wichita, Kansas City, St. Joseph, St. Louis and Oklahoma City on the one hand and the territory above [fol. 1391] described on the other. This, in effect, authorized the publication of the Southwestern Horse and Mule Scale for general application between the markets above named and points in that part of the southwest described above. The Southwestern Horse and Mule Scale was in reality the scale prescribed for application on soap and potatoes in the Memphis-Southwestern Investigation, 77 I. C. C. 473. In prescribing a separate scale of rates on horses and mules for application within that part of western trunk-line territory and the Southwest above outlined, the commission departed from the basis adopted in previous cases involving rates on horses and mules from western trunk-line origins of directing that the rates on this kind of live stock should be made certain percentages over the fat cattle rates contemporaneously prescribed for application within and from the same territory. Dimmitt-Caudle-Smith Live Stock Commission Co. v. R. R. Co., 47 I. C. C. 287; South Dakota R. R. Commissioners v. C. &

N. W. Ry. Co., 77 I. C. C. 451; and Nebraska Live Stock Case, 89 I. C. C. 444. Subsequently in I. & S. No. 2389, Rates on Horses and Mules, 102 I. C. C. 87, the Commission directed that the rates between the markets in the Southwest and Texas differential territory[1] and New Mexico should be constructed by adding to the Southwestern [fol. 1392] Horse and Mule Scale certain mileage differentials therein provided. The Southwestern Horse and Mule Scale became effective on May 20, 1925, except as to the rates from or to points in Kansas, eastern Colorado and southern Missouri, respectively, to or from Wichita, Kansas City, St. Joseph and St. Louis. The extension of the Southwestern Horse and Mule Scale to Kansas, eastern Colorado and southern Missouri was indefinitely postponed by order of the Commission, dated March 16, 1925,

[1]Texas differential territory is now defined in the Consolidated Southwestern Cases, 139 I. C. C. 535 and 144 I. C. C. 630, as follows:

Section No. 1. Texas differential territory consists of points designated in section No. 3, and all that portion of Texas lying west of the line described in section No. 2 hereof.

Section No. 2. Via the Panhandle & Santa Fe line, Higgins to Amarillo, and thence to Fullerville through Canyon, Plainview, Lubbock and Slaton; thence via an air line passing through Fluvanna to Midland; thence via an air line immediately east of the Sterling City branch of the Gulf, Colorado & Santa Fe line to San Angelo; thence via an air line passing through Eden, Menard, and Llano to San Antonio, passing east of the Fredericksburg & Northern line and the Kerrville branch of the Texas & New Orleans line; thence via an air line passing immediately west of the International-Great Northern line to Devine; thence via an air line to North Pleasanton; thence via the San Antonio, Uvalde & Gulf Line through Pleasanton, Methis, and Odum to Corpus Christi.

Section No. 3. Additional points in differential territory; Points on the Panhandle & Santa Fe, Spearman, Floydada, and Crosbyton branches; points on the Fort Worth & Denver City, Estelline branch; points on the Quanah, Acme & Pacific west of Wheatland and points on the San Antonio Southern south of Kirk.

following the receipt of a joint petition for further hearing and reargument from the Kansas Public Utilities Commission and the Chamber of Commerce of Kansas City, Mo. Further hearings were had at Topeka, Kans., on May 15 and 16, 1925. On November 20, 1925, the examiner before whom the hearings were held submitted his proposed report. Exceptions having been filed to the examiner's proposed report, and objections having been received to the rate of progression of the Southwestern Horse and Mule Scale, the commission upon further consideration issued an order under date of January 4, 1926, reopening these proceedings for further hearings with respect to the reasonableness, lawfulness and propriety of the rates and minimum weights in connection therewith. On the same date dockets Nos. 13273, The Nebraska Livestock Case, supra, and No. 12268, the so-called South Dakota Case, supra, were reopened and assigned for further hearings in connection therewith, but only with respect to the rates on horses and mules, which rates were 115 per cent of the live stock scales therein prescribed. Further hearings were held on these consolidated cases at Kansas City, Mo., during the week of October 1-6, 1928. By order of February 8, 1928, these hearings were restricted solely to rates for the future.

Area and Rates Comprised Within this Proceeding

Before considering the contentions of the parties it might be well to define the territory comprised in these consolidated cases. Briefly, it includes all of the Southwest, by [fol. 1393] which term is meant the states of Texas, Oklahoma, Arkansas, eastern New Mexico, and Louisiana west of the Mississippi River[1]; the western trunk line states of Kansas, Nebraska[2], South Dakota[3], Colorado east of the

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[1]The territory within which the Southwest Horse and Mule Scale was originally intended to apply is thus defined in the appendix to the report in 93 I. C. C. 479, 498:

"• • • the States of Kansas, Oklahoma, and Arkansas; Texas common-point territory, including the Fort Worth-Dallas group and including points on and east of the line of the Fort Worth & Denver City north of Amarillo, Tex.; that part of Louisiana west of the Mississippi River; that

Colorado common points, and Missouri south of the Missouri River.

Excepting the South Dakota Case, supra, none of the complaints bring in issue the rates to the territory east of the Mississippi River other than to the river crossings at East St. Louis, Ill., Memphis, Tenn., and New Orleans, La. In the South Dakota Case, supra, the rates from South Dakota origins to destinations in Minnesota, Wisconsin and Illinois were assailed together with the rates to Iowa, Missouri and Nebraska. Although rates to northern Missouri, Iowa and Illinois are assailed in No. 13627, the evidence submitted on behalf of the complainants therein was confined to rates to the territory south of the Missouri River.

[fol. 1394] Within the area above outlined no less than six different rate bases apply, and if we include northern Missouri there are eight bases. These bases are as follows: the Southwestern Horse and Mule scale prescribed in Horse and Mule Rates in the Southwest, 1924, supra; the Kansas-Missouri rates; northern and southern Nebraska scales, prescribed in Nebraska Live Stock case,

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part of Missouri south of the Missouri River; that part of Colorado on and south of the lines of the Chicago, Rock Island & Pacific and the Union Pacific through Limon to Denver and on and east of the main line of the Colorado & Southern south of Denver through Pueblo and Trinidad to the Colorado-New Mexico State line; and that part of New Mexico on and east of the line of the Colorado & Southern."

[2]The rates within and from Nebraska are in issue only to the extent indicated in the Nebraska Livestock Case, 89 I. C. C. 444, which was a proceeding instituted to determine whether the proper relationship existed between the intrastate rates to Omaha and South Omaha, and the interstate rates from the same Nebraska origins to the Missouri River cities of St. Joseph and Kansas City, Mo., and Sioux City, Ia. The scales therein prescribed were designed to remove the undue preference found to exist in the intrastate rates to Omaha and South Omaha.

[3]Only to the extent assailed in South Dakota R. R. Commissioners v. C. & N. W. Ry. Co., 77 I. C. C. 451.

supra; and the two South Dakota scales, prescribed in the South Dakota case, supra, one scale applying from points in that state east of the Missouri River and the other applying from points west of that river. If we were to include the rates from northern Missouri we have two more scales, namely, the northern and southern Missouri scales prescribed in the Dimmit-Caudle-Smith case, supra. The rate situation is further complicated by the intrastate rate scales in effect in Texas, Kansas, Oklahoma, Nebraska and South Dakota. While the intrastate rates are not directly in issue except those in Kansas and to a limited extent those in Nebraska, they will be affected necessarily by the decision in this case. As stated in the report in the Nebraska Livestock case, supra, the rates within Nebraska are in issue only to the extent that the rates to Omaha and South Omaha may be unduly preferential as compared with the rates from Nebraska origins to St. Joseph and Kansas City, Mo., and to Sioux City, Ia.

The complicated and interlapping network of rates in effect in the territory described closely parallels a similar rate situation now existing in this territory on live stock.

Flow of Traffic

Horses and mules are raised mostly on the farms of the west and southwest. They are sold by the farmers to dealers, who, after assembling them at some interior point, ship them to the markets at East St. Louis, Kansas City, Ft. Worth, Omaha, Wichita, St. Joseph and Sioux City, where they are sold "on the block" for reshipment to the southern and eastern states for retail distribution. As the territory of distribution is to the east, the loaded move- [fol. 1395] ment naturally is in that direction, the cars are returned west-bound largely empty.

From the southwest the flow of traffic is mainly to the southeast. The receipts at the Kansas City Stockyards for the year 1927 show that out of a total of 44,067 horses and mules received at that yard 27,012 were from Kansas and only 488 were from Texas and 101 from Arkansas. Thus, the Ft. Worth dealer is concerned mainly with the in-and-out rates to the southeast accorded the dealers located at Wichita and Kansas City. From the western trunk line states the traffic moves either to or through the Missouri River markets, dealers at these markets competing with

one another for consignments for resale to dealers in Chicago and other cities in central territory. The movement from South Dakota is almost entirely to the east, there being no movement of any consequence to the southeast. Shippers in the latter state, therefore, claim that their rate structure should not be tied up with that of the southwest. They are joined in this contention by shippers in western trunk-line states, who claim that the density of traffic and competitive conditions in that territory warrant a lower measure of rates therein than applies within the southwest.

Contention of the Parties

Recent changes in economic conditions and in the rate structure of the west and southwest, present and proposed, greatly impair the evidence introduced prior to the last hearings held herein. This is recognized by the parties, as is indicated by the changed character of their proposals and the evidence in support thereof. Briefly stated, the positions now taken by the various interests affected by this proceeding may be summarized as follows:

The Texas complainants, which term includes complainants in Nos. 12358, 13619, and 13627, insist: first, that economic conditions have so improved in Texas differential [fol. 1396] territory that no justification now exists for the differentials authorized in I. & S. No. 2389, Rates on Horses and Mules in the Southwest, supra, for addition to the Southwestern Horse and Mule Scale to construct the rates to and from Texas differential territory; second, that transportation and economic conditions in Texas are substantially similar to those existing in Kansas and between Kansas and southern Missouri, and that, therefore, the same scale of rates should apply from Ft. Worth and other Texas origins to the Missouri River markets and to St. Louis and East St. Louis as apply from Kansas origins to these markets; and third, that the rate of progression of the Southwestern Horse and Mule scale is too rapid and should be revised.

The Chamber of Commerce of Kansas City, Mo., and the Chamber of Commerce of St. Joseph, Mo., jointly urge the adoption of two scales of rates, compiled upon a uniform rate of progression of 6 cents for every 100 miles—the first scale for application in the southwest, the other and lower scale, for application within and from western trunk line

territory, in particular between Kansas and southern Missouri. These interests argue that the limitations of the issues in these proceedings preclude a complete adjustment of the rates on horses and mules in the west, inasmuch as the rates to Omaha and Chicago from the Southwest and from western trunk line territory are not in issue, nor, with the exception of the states of Kansas and Nebraska, are the intrastate rates brought in issue. They urge that whatever basis is adopted the rate of progression should be uniform, in which contention they are opposed by the Board of Railroad Commissioners of South Dakota and others, and that the rates within western trunk-line territory should be lower than in the southwest; that in the absence of through rates to the east and southeast, there should be a reasonable basis of proportional rates to apply from Kansas City and St. Joseph to the Mississippi River crossings at Memphis and St. Louis; and that the rates to and from Kansas City and St. Joseph should be grouped. [fol. 1397] Finally, they urge that such scale as may be adopted should be related to the cattle scale which may be prescribed in Part 9 of No. 17000, Live Stock Western District Rates. In the suggestion that the rates on horses and mules should be made a certain percentage over the cattle rates, the Kansas City and St. Joseph interests are joined by those representing Wichita, Fort Worth, and other shippers of livestock, and the railroad commissions of Nebraska and South Dakota. In fact, the only opposition to relating the rates on horses and mules to the rates on cattle and other forms of livestock comes from the carriers. They claim that the cattle and other livestock rates throughout the west are on too low a level to warrant these rates being taken as a measure for the rates on horses and mules. The carriers advance certain arguments, mostly fallacious, whereby they seek to differentiate horses and mules from other kinds of livestock.

The Wichita (Kans.) Chamber of Commerce and associated complainants in Docket No. 11018 are interested primarily in the rates to the southeast. Their main concern is with the relationship that the proportional rates from Wichita to Memphis bears to the proportional rate from Kansas City to Memphis, it being their contention that the Wichita to Memphis proportional rate should bear the same relationship to the Wichita to Memphis local rate as the Kansas City to Memphis proportional rate bears to the

Kansas City to Memphis local rate. They submit a proposed scale constructed by taking 115 per cent of the so-called 1716 cattle scale [1] modified to date for distances under 450 miles, the Director General, or amended Shreveport, scale [2] for distances from 450 miles to and including 950 miles, and the northwestern scale [3] for distances in excess thereof. They ask that "whatever scale is prescribed for application within the southwest be made uniform from all markets to the Mississippi River crossings on traffic going into the southeast."

[fol. 1398] The Nebraska State Railway Commission was represented at the hearing by witness whose testimony was directed mainly to showing that the State of Nebraska should not be divided into two or more rate territories as was done in Nebraska Live Stock Case, supra, and in Western Cement Rates, 48 I. C. C. 201, 52 I. C. C. 225, 69 I. C. C. 644, and 132 I. C. C. 273. To this end exhibits were introduced which indicate that the western part of the state raises as many horses and mules as the eastern portion. This witness also compares the Nebraska live stock scales, which he asserts moves more live stock than any other scale, with those prescribed in the South Dakota case and the Dimmit-Caudle-Smith case, supra, for application from South Dakota and northern Missouri, respectively, to show that the Nebraska scales are relatively too high. As comparisons of the various scales in effect in western trunk line territory and the southwest are considered in another part of this report, and as the testimony of the witness for the Nebraska State Railway Commission is devoted to describing conditions within that state, a detailed discussion of the evidence of this witness appears to be unnecessary, particularly in view of the limited rate situation under consideration in the Nebraska Live Stock case, supra.

The Board of Railroad Commissioners of South Dakota likewise take the position that the rates on horses and

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[1] Prescribed in Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. 160, 23 I. C. C. 656.

[2] The Shreveport Scale was prescribed in Shreveport-Texas Cattle, Lignite, Wood, and Tanbark, 48 I. C. C. 283.

[3] Prescribed in American National Live Stock Asso. v. O. W. R. R. & N. Co., 109 I. C. C. 621.

mules should bear a percentage relationship of not more than 115 per cent of the contemporaneous fat cattle rates. They join in the request of the Chambers of Commerce of Kansas City and St. Joseph that the decision herein should be postponed, until after decision has been reached in Part 9 of Docket No. 17000, and that the rates on horses and mules should be made a percentage of the rates therein prescribed. They contend that the rates from South Dakota have no bearing upon the rates from the southwest to the Missouri River markets; that their main competition is with Iowa, Illinois and Minnesota; and that therefore, the rates from South Dakota should be made with [fol. 1399] relationship to the rates in effect in those states, and as the rates from those states are not in issue in this case, no proper adjustment can be made in the rates from South Dakota. They also submit two scales of rates, one scale constructed by taking 115 per cent of the fat cattle rates suggested for application within District No. 1 as defined in an exhibit introduced in Part 9 of Docket No. 17000, and reintroduced herein as Exhibit No. C. 174. The second scale is made 110 per cent of District No. 1 scale of rates and is to apply in District No. 2 as defined in the said exhibit. These districts are defined as follows:

District No. 1—To include the territory west of the Western Bank of Lake Michigan and west of the Indiana-Illinois State Line; thence Ohio River to Cairo; thence Mississippi River to St. Louis; thence the Frisco thru Springfield to Joplin; thence the boundary line between Kansas and Oklahoma to Kiowa; (see Note A) thence in a northerly direction thru Pratt, Larned, Hoisington, and Almenea, Kan.; thence in a continuing northerly direction thru Beaver City, Arapahoe, Elwood, Lexington, Lomax, Broken Bow, and Long Pine, Nebraska; thence northeast thru Winner, S. D., to Chamberlain; thence following the Missouri River to Bismarck; thence east via the line of the Northern Pacific thru Fargo to Duluth.

(Note A)—Or via the boundary lines already described up to Joplin; thence via the Oklahoma-Kansas boundary to a point just south of Anthony; thence northerly thru Hutchinson, Salina and Mankato, Kansas, to Superior, Neb.; thence thru Hastings, Grand Island, Central City and O'Neill, Neb.; thence thru Running Water, Tyndall, Mitchell and Aberdeen to the North Dakota State Line (Cement

Rate Case boundary); thence easterly via the State line to White Rock, S. D.; thence via the line of the C., M. & St. P. thru Graceville and Ortonville to Minneapolis (or to Duluth).

District No. 2—To embrace the territory west of District No. 1 (or west and north of District No. 1-(A), to and including a line drawn south from the Canadian border through Shelby (or Havre) to Great Falls; thence west of the line of the Great Northern to Laurel; thence west of Red Lodge; Cody and Lander thru Ogden and Salt Lake; thence south of the main line of the Union Pacific to Cheyenne; thence along the main lines extending south through Colorado common points, Denver, Pueblo and Trinidad to the southern Colorado boundary; thence easterly along the southern Colorado and Kansas boundaries to point of intersection with the western boundary of District No. 1.

[fol. 1400] District No. 3—To include southwestern territory south of St. Louis, west of the Mississippi River; thence via the Gulf Coast to such a western boundary as may be determined by the Commission; thence northerly to a point of intersection with the southern boundary of District No. 2.

District No. 4 or 4 and 5—To include all of or portions of the balance of the territory west of the western boundaries of Districts No. 2 and 3.

Under the above suggested division the dividing line between Districts No. 1 and No. 2 would practically bisect the states of Kansas, Nebraska and South Dakota, following in the latter states the division made by the Missouri River. The proposed adjustment would make effective two scales of rates from Kansas, Nebraska, South Dakota, North Dakota and Minnesota to eastern markets, the western scale being 110 per cent of the eastern. No suggestion is made as to the method of constructing rates from District No. 3, which is the southwest.

The southwestern lines urge that the Southwestern Horse and Mule scale is too low. They seek a scale 45 per cent of the 100 per cent scale prescribed in the Consolidated Southwestern Cases, 123 I. C. C. 203, and ask that we substitute this scale for the Southwestern Horse and Mule scale and prescribe it for application between Kansas

and southern Missouri. In support of their position that the same scale should apply in Kansas and southern Missouri as applies in the Southwest they assert on brief:

These rates should apply in this territory not only because they are reasonable but also because all shippers and all markets in the entire territory covered by this brief should be placed upon an equality as to rates, for otherwise it is apparent the dealers moving traffic between these points will have an advantage to which the evidence shows they are not entitled. If these rates should not be established between these points, the shippers in Kansas, for example, will have an advantage in rates to the markets over the dealers in Oklahoma just across the border, whereas they should be on equality as to rates, the small difference, if any, in the transportation conditions considering other circumstances not being of vast importance. [fol. 1401] It will be noted that the southwestern lines are in accord with the position taken by the Texas shippers in urging that the same scale of rates should apply throughout the territory covered by these complaints.

The Western Trunk Lines propose three scales of rates for application within western trunk line territory north of the Nebraska-Kansas state line. The base scale is 45 per cent of the first class scale proposed by these carriers in Docket No. 17,000, Part 2, Western Trunk Line Class Rates, for Scale I territory as defined by them in Part 9 of Docket No. 17000. The second and third scales proposed are 110 per cent and 115 per cent respectively, of the base scale, and are for application in Scale II and Scale III territories. On traffic moving inter-territorially it is proposed that the highest scale should apply for the entire distance. The boundaries of the three territories are defined as follows:

Scale I

Description of territory—On and east of the Northern Pacific to Hinckley; Great Northern to Minneapolis; C., St. P. M. & O. to Sioux Falls; C., M. & St. P. to Sioux City; C., St. P., M. & O. to Norfolk; Union Pacific through Humphrey and Columbus to Grand Island; St. J. & G. I. to Hastings; Missouri Pacific to Superior, Nebraska; A., T. & S. F. through Courtland, Concordia, Manchester and

Abilene, Kansas to Detroit, Kansas, to Lost Springs, to Strong City; thence air line to Brazar; A., T. & S. F. to Eureka; Frisco to Severy, Kansas, Oswego, Kansas, Columbus, Kansas, Galena, Kansas; Kansas City Southern to Joplin; thence Frisco to St. Louis, but not south of the Kansas-Oklahoma line or Colorado-New Mexico-Oklahoma line.

Scale II

Basis 110% of Scale I

Territory west of the above described line in state of Kansas, Nebraska, Colorado, Wyoming, South Dakota and North Dakota to and including points located on the following lines: Air line from the North Dakota northern boundary at the intersection of the North Dakota boundary and that between Manitoba and Saskatchewan to Minot; thence air line to Max, North Dakota thence Soo Line to Mandam; thence Missouri River to Chamberlain, South Dakota; thence air line through Winner, South Dakota, Valentine, Nebraska, Alliance, Nebraska; thence C., B. & Q. R. R. through Northport to Sidney; thence Union Pacific to Cheyenne; thence Colorado and Southern to Denver; thence C. & R. G., Colorado Springs to Trinidad inclusive.

[fol. 1402]

Scale III

Basis 115% of Scale I

Territory west of the above described line in North Dakota, South Dakota, Nebraska, Colorado and including the State of Wyoming.

The southern and western boundaries of Scale I territory as proposed by the western trunk line carriers in Part 9 of Docket No. 17000 conform very closely to the southern and modified western boundaries of Scale I territory as outlined by the Board of Railroad Commissioners of South Dakota, supra. Both proposals follow the line of the St. Louis-San Francisco from St. Louis through Springfield to Joplin, Mo., but the western boundary of the western trunk lines Scale I territory follows the boundary of the Kansas-Missouri group as defined in Docket No. 13535, Consolidated Southwestern Cases, supra, whereas the modified western boundary of the Board of Railroad Commissioners

of South Dakota Scale I territory extends further west, and follows the western boundary line of Scale III territory as defined in Docket No. 8182, Western Cement Rates, 48 I. C. C. 201.

In the present proceedings the western trunk lines' proposal to limit the southern boundary of their proposed Scale I territory to the Nebraska-Kansas state line leaves for the purposes of this case only those few points in South Dakota which are situated on the line of the Chicago, Milwaukee, St. Paul and Pacific extending south from Sioux Falls, S. Dak., to Sioux City, Iowa as within their Scale I territory and points in Nebraska on and east of the lines of railroad extending southwesterly from Sioux City, Iowa, through Norfolk, Humphrey, Columbus, Grand Island and Hastings to the southern boundary at Superior. The reasons for the western trunk lines proposed elimination from their Scale I grouping the territory south of the Nebraska-Kansas state line is not definitely explained, but we infer it is due to the proposal of the Chicago, Rock Island & [Vol. 140] Pacific to apply in Kansas rates based on 45 per cent of the southwestern first class scale as suggested by the southwestern lines for application within southwestern territory. Thus, the carriers by their proposals place Kansas within southwestern territory.

Volume of Movement, Production and Price

Before proceeding to a detailed consideration of the contention of the parties it might be well to indicate the volume of the movement and the price received at the primary markets per head. The movement of horses and mules is a light one as compared with the movement of edible livestock, constituting not more than three or four per cent of the volume. A statement of the Chicago, Burlington & Quincy, which operates about 2,800 miles of railroad in Nebraska, a large livestock producing state, is fairly illustrative of the volume of movement of the principal stock carrying roads. It shows that for the year 1927 that road hauled 4,944 cars of horses and mules as compared with 186,329 cars of edible livestock, or slightly more than 2.6 per cent of the total movement. The principal producing western states, exclusive of Texas, in order of rank by value for the year 1927, are shown in the following table, taken from an exhibit of record:

State	1927	
	No. of head	Value
Iowa	1,211,000	$90,989,000
Nebraska	933,000	53,593,000
Missouri	983,000	53,325,000
Kansas	1,077,000	48,092,000
Oklahoma	930,000	38,152,000
North Dakota	683,000	36,374,000
South Dakota	665,000	31,456,000
Colorado	367,000	16,457,000
Montana	558,000	17,098,000
Wyoming	200,000	6,338,000

Another exhibit, quoting the 1920 census, shows that the 11 states lying west of the Mississippi River, including Louisiana, and east of the Rocky Mountain states originate 34.8 per cent of the total live stock produced in the United States. Of the total horse and mule production those states raise 49.4 per cent, or one-half; 34.2 per cent originating in the 7 states north of the Oklahoma-Arkansas boundary lines and 15.2 per cent in the southwestern states.

The receipts at the principal stock markets in the west and middle west, shown in detail in Appendix 1, indicate [fol. 1404] a marked decline as compared with pre-war years, brought about, no doubt, by the increasing use of automobiles and trucks. Taking 1913 as a representative year prior to the World War we find that the total receipts of horses and mules at the ten western markets named in Appendix 1 were 488,000 head. Excluding the World War years, when these animals were in great demand for the allied armies, we find the receipts had fallen to 260,000 in 1922, 325,000 in 1923, 266,000 in 1924, 261,000 in 1925 and 228,000 in 1926.

The animals do not load much, if any, in excess of the minimum weight of 23,000 pounds for the standard car of 36 feet, 6 inches length, the average being variously stated as from 11.3 tons to 11.7 tons per car.

The price varies greatly, and depends upon the size, quality and use to which the animal is to be put. Also, the prices on the farm are much below those at the principal markets. This is doubtless due to the fact that the farm price covers the general run of horses and mules whereas the price at the market grades according to the character

and quality of the animals, only the better grades finding their way to the larger stock markets. Thus according to the Department of Agriculture year books, on January 1, 1928, the average farm price for horses ranged from $25.02 for those under one year old to $69.87 for two year olds and over, and for mules from $31.10 to $82.60. The average monthly farm prices for the 11 western and southwestern states hereinbefore mentioned were, as of January 1, 1928: Minnesota, $86; Iowa, $83; Missouri, $68; North Dakota, $57; South Dakota, $60; Nebraska, $74; Kansas, $60; Louisiana, $85; Texas, $70; Oklahoma, $52; Arkansas, $64. These prices show a material decline from per-war years; for example, on January 1, 1913, the average farm prices for horses ranged from $48.75 to $121.06, and for mules from $59.31 to $134.05. While there has been a slight improvement in the prices for horses in the past three or [fol. 1405] four years there is no indication of a recovery in price to those obtained immediately prior to and after the World War. Moreover, the slight price increase shown since 1924 for horses has been accompanied by a falling off in production, the number on January 1, 1924, amounting to 17,222,000 as compared with 14,541,000 on January 1, 1928. The prices for mules do not show any recovery, other than that the average price on January 1, 1928, of $79.60 showed a recovery from the slump of the previous year when the lowest average price yet reached for these animals of $74.32 was recorded. Accompanying this decline in the price for mules there has likewise been a falling off in the number raised; On January 1, 1924, there were 5,730,000 head of mules on the farms and on January 1, 1928, there were 5,566,000 head, a decline of 164,000. Here again is indicated the effect produced on this industry through the increasing use of motor tractors and other gasoline driven farm implements. This decline in production is further illustrated by reference to Appendix I, which shows the receipts of horses and mules at the principal western stock yards from 1900 to 1926, inclusive.

When we come to consider the prices received at the stock yards we find a wide variance in the quoted values, due doubtless to the different bases used in compiling these statistics. Thus, one exhibit, introduced on behalf of the shippers, quotes the following prices received at the Kansas City Stock Yards, taking December 31, 1927, as illustrative: For horses, $45 to $85 for chunks and $50 to $150

for drafters; and for mules from $85 to $225. By another exhibit, introduced by the carriers, the average prices at Kansas City on October 2, 1928, were as follows: For horses, medium to good chunks, $50 to $60; good to choice chunks, $75 to $100; medium to good drafters, $85 to $140; good to choice drafters, $140 to $200; and for draft mules, $175 to $225. Similar prices prevail on the East St. Louis [fol. 1406] market. Another exhibit introduced by the carriers gives the average prices on the Chicago Stock Yards for 1927 as follows: Farm chunks, $90, delivery horses $125, express horses $150, draft horses $175, saddlers medium quality $150, saddlers good to choice $750. Based on the exhibit from which the last quotations were taken a witness for the carriers contended that the values of the animals are greatly enhanced over the price shown on the farm by the transportation service they have received; and that, therefore, these animals can take a higher basis of rates than are now in effect. However, this contention overlooks the fact that only the better grade of horses find their way to the stock markets, which fact is conceded on cross examination by the witness who advances this contention. That the decline in production has been accompanied by a decline in market price is indicated by Appendix 2 which shows the prices received at the Kansas City Stock Yards for the years 1923 to 1926 inclusive.

From the foregoing resume of the evidence bearing upon production and price for this class of livestock the conclusion is inescapable that the horse and mule industry is in a depressed state. Although there is nothing to indicate that the rates have had anything to do with bringing about this situation we must not lose sight of the fact that under the Hoch-Smith Resolution, approved by the Congress on January 30, 1925, this kind of livestock is entitled to as favorable consideration as any other class of livestock. Because horses and mules were excluded by the language of the order instituting the livestock investigation in the western district that fact does not warrant an assumption on the part of the carriers that these animals are not entitled to the same consideration as other forms of livestock under the Hoch-Smith Resolution. That resolution refers to "livestock" without distinction as to whether it is "edible" or "nonedible".

[fol. 1407] We will now consider the evidence introduced by the parties in support of their various contentions in

the order above outlined. Rates will be stated in cents per 100 pounds, or in dollars per standard 36 foot 6 inch car, with minimum weight of 23,000 pounds.

Should Differentials be Abolished on this Traffic from Texas Differential Territory and New Mexico

In I. & S. No. 2389, Rates on Horses and Mules in the Southwest, supra, decided July 30, 1925, the commission prescribed a scale of differentials to be added to the Southwestern Horse and Mule scale to make rates between points in Texas differential territory and New Mexico, respectively, and the markets of Fort Worth, Oklahoma City, Wichita, Kansas City, St. Joseph and St. Paul. These differentials are as follows:

Distance	Differential
25 miles and under	2
45 miles and over 25	2.5
70 miles and over 45	3
90 miles and over 70	3.5
110 miles and over 90	4
135 miles and over 110	4.5
160 miles and over 135	5
190 miles and over 160	5.5
220 miles and over 190	6
260 miles and over 220	6.5
280 miles and over 260	7
320 miles and over 280	7.5
380 miles and over 320	8
425 miles and over 380	8.5
475 miles and over 425	9
525 miles and over 475	9.5
600 miles and over 525	10
Over 600 miles	10.5

In support of the contention that differentials should not be continued on horses and mules witness for the Texas complainants stresses the rapid growth which has taken place in Texas differential territory in the past few years. The following table, taken from an exhibit of record, shows the increase in population per mile of railroad in this territory as compared with that in Texas common point territory and the states west of the Mississippi River, the per centage of increase in Texas differential territory being greater than for any state shown:

Statement Showing Human Population Per Mile of Railroad

Territory	Total rail mileage Dec. 31 1925	Census 1920	Estimate 1926 See Note	Population per mile of railroad 1920	1926	Increase
Southwest						
Texas:						
Common Point	12,952.0	4,153,466	4,691,405	321	362	12.7%
Differential	3,246.0	509,762	729,595	157	225	43.3
	16,198.0	4,663,228	5,421,000	288	335	16.3
New Mexico	2,997.9	360,350	388,146	120	129	7.5
Oklahoma	6,621.0	2,020,283	2,342,474	306	354	15.6
Arkansas	4,901.2	1,752,204	1,903,048	350	388	8.3
Louisiana	4,867.7	1,790,509	1,910,591	369	374	1.3
Total	35,585.8	10,682,574	11,973,259	290	336	11.2
Western Trunk Line						
Kansas	9,493.7	1,769,257	1,820,096	106	192	3.2
Nebraska	6,109.2	1,296,372	1,304,703	209	224	7.1
South Dakota	4,244.7	636,547	689,346	150	162	8.0
North Dakota	5,276.0	646,872	641,192	123	162	
Minnesota	8,786.7	2,387,125	2,651,306	272	305	11.0
Wisconsin	7,500.5	2,632,067	2,884,734	351	305	8.6
Iowa	9,814.2	2,404,021	2,422,915	245	247	.8
Illinois	11,994.4	6,405,280	7,202,983	584	649	11.1
Missouri	8,051.3	3,404,055	3,498,143	423	434	2.6
Total	71,351.5	21,661,596	23,196,218	303	325	10.0
Mountain-Pacific						
Arizona	2,378.9	334,162	444,700	140	187	33.5
Colorado	5,077.1	939,629	1,058,722	185	209	12.9
Wyoming	1,991.9	194,402	235,689	90	118	12.0
Montana	5,037.2	548,889	694,965	109	138	26.6
Idaho	2,914.8	431,066	522,175	140	179	20.9
Utah	2,189.3	442,396	513,711	205	362	14.6
Nevada	2,136.9	77,407	77,407	362	362	
California	8,288.1	3,426,061	4,316,459	413	520	25.0
Oregon	3,356.9	783,389	877,477	233	261	12.0
Washington	5,559.0	1,356,621	1,538,228	244	277	13.5
Total	30,929.6	8,542,622	10,279,541	210	264	12.1

Note.—U. S. Bureau of Census estimate.

[fol. 1409] The above tabulation of 225 persons per mile of railroad in Texas differential territory compares with 189 persons per mile of railroad for 1927 as shown in an exhibit introduced by witness for the Chicago, Rock Island & Pacific. Accepting the Rock Island's figure, it would still appear that the population per mile of railroad in differential territory compares quite favorably with that shown for Kansas and South Dakota, from which states much lower levels of rates apply. Moreover, if we again accept as representative the tabulation of the Rock Island which shows 5.5 persons per square mile for Texas differential territory, we find that this figure approximates the population per square mile for west Kansas. The question therefore naturally arises: Should not the differentials from Texas differential territory be abolished if differentials are not prescribed for western Kansas or western South Dakota? The answer should be in the affirmative unless a showing is made that transportation conditions or the financial status of the lines serving Texas differential territory justifies the continuance of these differentials.

Among other evidence submitted by the Texas complainants to show marked improvements in conditions in differential territory may be listed the following: New mileage completed and under construction since 1918 amounted to 907 miles for differential territory (this figure is disputed by the carriers) as compared with 305 miles for common-point territory; the number of farms increased 72.8 per cent from 1910 to 1925; agricultural tonnage increased 73 per cent from 1914 to 1924; shipments of fruits and vegetables from the Rio Grande Valley increased 1195 per cent from 1919 to 1926; and the production of petroleum showed an increase of 3920 per cent in 1927 over 1923. The carriers contend that no significance should be attached to the marked increase in petroleum shipments because the usual history of the petroleum industry indicates that the flush [fol. 1410] production which accompanies the discovery of new fields, as is the case in west Texas, is followed by a rapid decline in shipments. Moreover, they point out that these fields require considerable expenditure for new tracks and equipment. Witness for the Texas & Pacific introduced an exhibit which showed that the capital expenditure authorized by that road for the period from January 1, 1927, to June 30, 1928, on account of the oil field develop-

ment in differential territory amounted to $4,832,092, of which amount $2,366,842 has been expended to June 30, 1928. A considerable amount of these expenditures they assert will be lost when the production in the west Texas fields decline to more normal proportions. As illustrative of this fact they point to the fact that the population of Amarillo, Tex., shown as 50,000 persons as of December 31, 1927, had declined, according to the estimates of the Census Bureau, to 39,200 persons on July 1, 1928. This decline in population is ascribed to the falling off in production of oil in the Panhandle fields.

The Texas complainants introduced a number of cost studies to prove that the cost of operation in differential territory, and the return on the investment to the carriers serving that territory, compare favorably with the cost of operation and the rate of return to the carriers in common-point territory, and for certain divisions of the same carrier in western trunk-line territory. The carriers assert that complainants in their computations have assigned trackage to differential territory which sould be allocated to common-point territory and that in other respects these exhibits are inaccurate. However, the studies made by the carriers are no more illuminating, and while we may concede that these exhibits of the Texas complainants are open to criticism they are at least more practical than certain of the cost studies introduced by the carriers, which will be hereinafter discussed. It is doubtless true, as an engineering witness for the Texas & Pacific contends in his criticism [fol. 1411] of the Texas complainants' cost studies of that line, that yardage and other terminal charges increase the operating costs for the division to which assigned, whereas they represent a cost which should be apportioned to the road as a whole; and that, therefore, comparisons of costs by divisions are misleading as total transportation and total operating expenses cannot be so compared. However, it does not follow that complainants' exhibits must be condemned because no better method of apportioning the cost among the various divisions of a carrier has been devised. In appendix 3 witness for the Texas complainants has attempted to segregate the costs for the three divisions of the Santa Fe which operate within and through Texas differential territory, namely the Pecos, Plains and Slaton Divisions, and to show that the unit cost of these divisions

compare favorably with other divisions of that road. Thus, the average unit cost per 1,000 gross ton miles for the year 1924 on the Santa Fe in differential territory is placed at $2.51, while the cost per 1,000 net ton miles amounted to $7.03. These unit costs complainants contrast with $2.91 per 1,000 gross ton miles and $6.83 per 1,000 net ton miles for the cost of operation in 1924 on the Northern and Southern Divisions in Texas of the Santa Fe, which divisions operate mainly within and through Texas common-point territory. Furthermore, the unit cost shown for Texas differential territory was less than that for the western district of the Santa Fe, on which the cost amounted to $3.19 per 1,000 gross and $7.99 per 1,000 net ton miles; and less than the unit cost for the middle district of the same carrier amounting to $2.83 and $7.44, respectively, both of which districts comprise main and branch lines of the Santa Fe in Kansas. The carriers contend that a great part of the traffic moving in differential territory is overhead, one witness stated that in New Mexico it amounted to 90 per cent of [fol. 1412] the total, and that were it not for this traffic the lines serving differential territory would be operating at considerable loss. However, in determining the cost of operation of a line of railroad, or of a division of that line, overhead traffic must be given due weight for, like originating or terminating traffic it enters into the cost of operation and affects the net return to the carrier.

As evidence that the lines serving Texas differential territory are prosperous the Texas complainants introduced a number of exhibits bearing upon the return to the carriers on their investments separated to show the lines in Texas differential territory from those serving Texas common-point territory. Certain of these carriers, such as the Texas & Pacific, serve both territories, so that the statements necessarily are inexact. One of these tables is attached hereto as Appendix 4. By reference thereto it will be seen that while the net operating income is lower the rate of return on the investment is higher for the lines serving differential territory than those operating in common-point territory—the rate of return for the lines in differential territory for 1925 being 5.4 per cent as compared with 4.3 per cent for common-point territory.

The Texas complainants show further that in recent years the Railroad Commission of Texas has abolished the dif-

ferentials formerly obtaining on a number of short and branch lines in differential territory because of the increase in intrastate traffic to and from points on these lines.

A series of cost studies, prepared by the Assistant Engineer of the Texas & Pacific, are perhaps the most representative of those introduced by the carriers in support of their contention that the differentials previously prescribed by the commission on this traffic should not be abolished. A summary of one of these exhibits is attached hereto- marked [fol. 1413] Appendix 5. It purports to show the cost of operation on the Rio Grande division of the Texas & Pacific in differential territory, including within that description that portion of the line extending from Big Springs to El Paso, as compared with the cost of operation on the remaining divisions of the Texas & Pacific extending east of Big Springs, and comprising the Fort Worth, Denton, and Louisiana divisions. This exhibit shows an operating cost per 1,000 net ton miles of $11.90 for differential territory as compared with $8.75 for common-point and Louisiana territories, from which this witness argues that the cost in 1926 of carrying a ton of freight one mile was 36 per cent greater in differential territory than in common-point and Louisiana territories. By a similar computation the cost for 1927 was placed at 46.3 per cent more for differential than for common-point and Louisiana territories. The fallacy in these exhibits rests in two assumptions; (1) that since the direct train cost of $2.805 per 1,000 net ton miles for the system as a whole was 30.6 per cent of the total operating cost of $9.15 per 1,000 net ton miles, the total operating costs per 1,000 net ton miles for differential territory also bears a similar relationship to the direct train costs per 1,000 net ton miles; and (2) that as the direct train costs per 1,000 net ton miles in differential territory is 36 per cent greater than in common-point territory and Louisiana, the total operating costs in differential territory is also 36 per cent greater. Neither of these assumptions are warranted. There is no more justification, for example, in assuming that the cost of maintenance of roadbed and structures, or maintenance of equipment, is 36 per cent higher in differential territory than to assume that it is the same as or 10 per cent higher than in common-point territory; and if we assume that the cost were 10 per cent greater in differential territory for the remaining items of

cost, constituting 69.4 per cent of the total, which the witness did not apportion between the two territories, the total [fol. 1414] cost of operation in differential territory would be only 18 per cent higher, instead of 36 per cent, than in common point territory and Louisiana.

Another exhibit introduced by witness for the Texas & Pacific, and attached hereto as Appendix 6, purports to show the physical factors which enter into the cost of operation, and the advantage that common point territory has over differential territory in this respect. Based upon the computations contained in this exhibit, the witness states that the composite grade for differential territory is 1.20 per cent and for the remainder of the road 0.7 per cent; or stated in another way, the ruling grade in Texas differential territory is 71.5 per cent greater than in common point territory. As the train load is affected by grade and curvature the carriers argue it is much more expensive to haul traffic in differential than in common point territory. Moreover, they point out there is but little rainfall in differential territory, and it is therefore necessary to haul water cars in addition to the tender between El Paso and Van Horn, and that this additional weight serves to increase the expense and cut down the load. Furthermore, this water has to be chemically treated before it can be used in the boilers. Differential territory also is subjected at times to heavy cloudbursts which destroy trackage and culverts.

The train load on the Texas & Pacific in net tons per freight train mile was stated to be 60 per cent greater for 1926, and 61 per cent for 1927, in Texas common-point and Louisiana territories than in differential territory. Here, also, the comparisons are misleading inasmuch as engines of the Texas type, with tractive effort of 96,000 pounds, are used in common-point territory, and those of the Santa Fe type, with 67,700 pounds of tractive effort, are used between Big Springs and El Paso.

[fol. 1415] Further detailed discussion of the carriers' evidence on this point appears unnecessary. It is no doubt true that the cost of operation in Texas differential territory is greater than in common-point territory, but the exact, or approximately exact, percentage of difference in cost is not established of record. Possibly it is impossible of exact determination. However as that may be, it can be said with certainty that the continuance of differentials

in the rates on horses and mules from Texas differential territory and New Mexico is not essential to the maintenance of a fair rate of return upon the investment of the carriers operating in differential territory. Viewed from a transportation standpoint alone, a higher basis of rates for application within differential territory than within common point territory would be justified; but economic conditions also must be considered and the continuation of differentials, without the necessity for them being shown, can only serve to retard the growth of industry in western Texas and New Mexico. Traffic from Texas differential territory necessarily involves long hauls, and total freight charges are high. An additional increase in the form of a differential over the usual scale rate for the particular distance should not be authorized unless the financial conditions of the carriers serving differential territory warrant such increased charge; and no such showing has been made. Moreover, should the commission in Part 9 of Docket No. 17,000, Live Stock, Western District Rates, approve only one scale of rates for western trunk-line and southwestern territories then for reasons hereinafter stated on page 68 et seq., the same treatment should be accorded to shippers of horses and mules from these territories. Furthermore, if higher rates are to apply from Texas differential territory, the same scale of rates should be prescribed for application from western Kansas and western South Dakota, where the density of population and operating conditions [fol. 1416] are slightly, if any, more propitious than in differential territory.

Accordingly, it is recommended that the scale of differentials prescribed in I. & S. No. 2389, Rates on Horses and Mules in the Southwest, supra, be eliminated; or, as an alternative, if this recommendation is not approved, that a scale of rates 10 per cent higher than the scale of rates hereinafter recommended should be approved for application in that part of western trunk-line and southwestern territories situated west of a north and south line dividing these territories as follows:

Commencing at the northern boundary of the State of North Dakota at the point of intersection between the provinces of Manitoba and Saskatchewan, thence by air line through Minot and Max, N. Dak., to the Missouri River,

thence along the eastern boundary of that river to the point of intersection with the 100 meridian of longitude, thence south along the line of that meridian to Higgins, Texas, thence along the line of the Pan Handle & Santa Fe to Amarillo, and thence to Fullerville through Canyon, Plainview, Lubbock, and Slaton; thence via an air line passing through Fluvanna to Midland; thence via an air line immediately east of the Sterling City branch of the Gulf, Colorado & Santa Fe line to San Angelo; thence via an air line passing through Eden, Menard, and Llano to San Antonio, passing east of the Fredericksburg & Northern line and the Kerrville branch of the Texas & New Orleans line; thence via an air line passing immediately west of the International-Great Northern line to Devine; thence via an air line to North Pleasanton; thence via the San Antonio, Uvalde & Gulf line through Pleasanton, Methis, and Odem to Corpus Christi; and the following additional stations in Texas: Points on the Panhandle & Santa Fe, Spearman, Floydada, and Crosbyton branches; points on the Fort Worth & Denver City, Estelline branch; points on the Quanah, Acme & Pacific west of Wheatland; and points on the San Antonio Southern south of Kirk.

[fol. 1417] Should Higher Rates Apply in Texas Common Point Territory than in Kansas, Nebraska, and Other Western Trunk Line States

Considered both from the basis of density of traffic and operating conditions, no material difference is to be found between Texas common point territory and Kansas, and if Kansas is to be given a rate parity with Texas common point territory, as has been suggested by the southwestern carriers, which suggestion is opposed by the Chambers of Commerce of Kansas City and St. Joseph, it should follow that for competitive and economic reasons the same level of rates must be extended into Nebraska and other western trunk line states. Although a different scale level has been suggested by the carriers for application in Nebraska and other western trunk line states than is recommended for Kansas, they fail to justify different rate levels for application in Nebraska than in Kansas. For example, no justification can be shown for a different rate basis from stations on the Chicago, Rock Island & Pacific in northern Kansas than

from contiguous stations on the paralleling route of the Chicago, Burlington & Quincy running through southern Nebraska. As livestock can be driven across country, the line carrying the lower level of rates would quickly draw all traffic of this character from the higher rated route.

In the following table, compiled from I. C. C. statement No. 28105, introduced as an exhibit, there is shown the traffic density for the various states and sub-divisions thereof comprising western trunk line territory and southwestern territory, together with the total freight revenue ton miles, and the average revenue ton miles per mile of road operated:

[fol. 1418]

Division	Average number of miles of road operated	Revenue ton miles, total	Average revenue ton miles per mile of road operated
Western trunk line territory			
Michigan (Northern Peninsula)	1,665.81	1,279,333,000	767,996
Wisconsin	7,123.67	8,249,637,000	1,158,060
Minnesota	8,619.94	11,541,128,000	1,338,887
Iowa	10,051.43	10,223,044,000	1,017,074
Missouri	7,822.85	10,884,096,000	1,391,321
Eastern North Dakota (1)	3,745.96	2,376,091,000	634,308
Western North Dakota (2)	1,395.60	1,289,221,000	923,775
Eastern South Dakota (3)	3,013.81	1,283,078,000	425,733
Western South Dakota (4)	1,191.16	446,471,000	374,820
Nebraska	6,247.18	7,182,739,000	1,149,757
Kansas	9,363.84	9,748,572,000	1,041,087
Eastern Colorado (5)	2,887.05	2,710,591,000	938,879
Southwestern territory			
Arkansas	4,392.25	4,473,899,000	1,018,589
Western Louisiana (6)	3,734.68	3,296,259,000	882,608
Oklahoma	6,333.23	6,247,458,000	986,457
Eastern Texas (7)	11,845.50	12,577,057,000	1,061,758
Western Texas (8)	3,230.99	2,579,480,000	798,356

(1) North Dakota east of the Missouri River from the South Dakota state line to Washburn; thence on and east of the Soo Line to Max; thence via air line through Minot and Lansford to the Canadian border.

(2) All points in North Dakota west of the above line.

(3) South Dakota east of the Missouri River.

(4) South Dakota west of the Missouri River.

(5) All points in Colorado on and east of the line of the Union Pacific from Wyoming-Colorado state line through Greeley to Denver; thence via the lines of the Atchison, Topeka & Santa Fe and the Denver & Rio Grande Western to Pueblo; thence via the Denver & Rio Grande Western to Trinidad; thence via the Atchison, Topeka & Santa Fe to the Colorado-New Mexico state line.

(6) Louisiana west of the Mississippi River.

(7) Texas common point territory, including all points on the Atchison, Topeka & Santa Fe from Goodwin, Okla., to Amarillo, to Canyon, to Lubbock, and thence to Snyder, omitting the Crosbyton and Floydada branches, and including all points on and east of an air line from Snyder through Big Springs, San Angelo, Devine, Kenedy and Sinton to Corpus Christi.

(8) The remainder of Texas west of the line above described.

By reference to the above table it will be observed that the average number of miles of road operated in Texas common point territory, i. e., 11,845.50, is greater than the average number of miles operated in Kansas, i. e., 9,363.84, while the average revenue ton miles per mile of road operated in common point territory, viz., 1,061,758, is substantially the same as in Kansas, viz., 1,041,087. Similarly, in [fol. 1419] Texas common point territory the average number of miles of road operated is greater than in Nebraska, while the average revenue ton miles per mile of road is not much below that shown for Nebraska. Indeed, the traffic density in Texas common point territory compares favorably with the states of greatest density in western trunk-line territory, and to a lesser extent this is true of Oklahoma.

Incidentally, it may be noted that similar comparisons of Texas differential territory with eastern and western South Dakota indicate that the average number of miles of road operated in differential territory is greater than in either eastern or western South Dakota, and that this is also true of the total revenue ton miles and the average revenue per mile of road operated.

The similarity in transportation conditions in the southwest as compared with Kansas and Missouri has been recognized by this commission in the Consolidated Southwestern Cases, 123 I. C. C. 203, wherein it is said at page 217:

This record, which includes exhibited excerpts from concurring testimony of both carrier and shipper witnesses in other cases, abundantly supports the conclusion that transportation conditions throughout the Southwest are substantially similar; and on the average they appear to be not greatly less favorable than those in Kansas-Missouri territory or in Nebraska.

The chambers of commerce of Kansas City and St. Joseph object to the proposal to place Kansas in the southwestern group. Their objection is natural, as under the present adjustment the rates from Kansas origins to Kansas City and St. Joseph (which takes the same rates as Kansas City) are lower than the rates for equal distances from Texas common point territory and the Southwest. These interests argue that prior to the decision in the Con-

solidated Southwestern Cases, supra, Kansas was included in western trunk line territory, and they urge that the former adjustment should be restored. However, the cost study introduced by the Chamber of Commerce of Kansas City compares the operating costs of the southwestern lines as a whole with those in western trunk line territory; and will be considered in the next succeeding subheading.

[fol. 1420] It is the conclusion of the examiner that Texas common point territory and Oklahoma, from both an economic and transportation standpoint, should be accorded the same rates as Kansas, Nebraska and other western trunk line states.

Southwestern Territory v. Western Trunk Line Territory

The record in these cases does not contain elaborate cost studies of western trunk line and southwestern territories as a whole. A comparison introduced by the Chamber of Commerce of Kansas City compares the freight service and freight operating expenses for the year 1925 of 18 western trunk line carriers with 30 roads operating in and through southwestern territory.[1] In this compilation the

[1] The list of roads shown in this compilation is as follows:
Western Trunk Line Group—Atchison, Topeka & Santa Fe lines east of Albuquerque, N. Mex.; Chicago & Alton; Chicago & North Western; Chicago, Burlington & Quincy; Chicago Great Western; Chicago, Milwaukee & St. Paul; Chicago, Rock Island & Pacific System; Chicago, St. Paul, Minneapolis & Omaha; Duluth South Shore & Atlantic; Duluth, Winnipeg & Pacific; Great Northern, Green Bay & Western; Lake Superior & Ishpeming; Minneapolis & St. Louis; Minneapolis, St. Paul & Sault Ste. Marie; Northern Pacific; Quincy, Omaha & Kansas City; St. Joseph & Grand Island; and Union Pacific.
Southwestern Group—Atchison, Topeka & Santa Fe lines east of Albuquerque, N. Mex.; Gulf, Colorado & Santa Fe; Fort Smith & Western; Fort Worth & Rio Grande; Gulf Coast Lines; International & Great Northern; Kansas City, Mexico & Orient; Kansas City, Mexico & Orient of Texas; Kansas City Southern; Kansas City, Oklahoma & Gulf; Louisiana & Arkansas; Louisiana Railway & Navigation Company; Louisiana Railway & Navigation Company of Texas; Midland Valley; Missouri

Santa Fe east of Albuquerque and the Rock Island system are placed in both groups. Including various short lines operating in Texas differential territory, Louisiana and Arkansas, the compilation shows that the average freight operating expenses per 1000 gross ton miles in southwestern territory for 1925 was $3.17 as compared with $2.89 in western trunk line territory; that the excess cost per gross [fol. 1421] ton mile in the southwestern group as compared with the western trunk-line group was 9.69 per cent. Excluding from the compilation the Santa Fe and the Rock Island the excess cost per gross ton mile for the southwestern group was 13.89 per cent. Other comparisons show that the percentage relationship in gross ton miles of the western trunk lines to the southwestern lines was 173.1 per cent; that the total operating revenue of the western trunk lines exceeded the southwestern lines by 156.9 per cent; that the operating expenses of the western trunk lines over the southwestern lines was 154.8 per cent; that the operating revenue per 1000 gross ton miles of the western trunk lines to southwestern group was 90.7 per cent, and the operating expenses of the western trunk lines to southwestern lines was 89.5 per cent.

The chambers of commerce of Kansas City and St. Joseph in further support of their position on this point refer to the recent decisions in Divisions of Freight Rates, 148 I. C. C. 457, and 156 I. C. C. 94, wherein the Commission drew the general conclusion that the cost of service in the southwest was in the neighborhood of 20 per cent greater than in western trunk-line territory based on the averages of the 1923 and 1924 operations of the carriers considered, and in the neighborhood of 17 per cent greater on the basis of 1924 operations.

As opposed to these conclusions the Texas complainants compare the operating costs for 1924 of six trunk-line sys-

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& North Arkansas; Missouri, Kansas & Texas; Missouri, Kansas & Texas of Texas; Missouri Pacific; St. Louis-San Francisco; St. Louis-San Francisco of Texas; St. Louis Southwestern; St. Louis Southwestern of Texas; San Antonio, Uvalde & Gulf; Southern Pacific Lines in Texas and Louisiana; Texas & Pacific; Trinity & Brazos Valley; Wichita Valley; Fort Worth & Denver City; Panhandle & Santa Fe; Chicago, Rock Island & Pacific System.

tems operating in and through southwestern territory with a like number of lines operating in western trunk line territory north of Kansas. This comparison, attached hereto as Appendix 7, assigns the Santa Fe and Rock Island Systems to southwestern territory. Thus grouped, the operating expenses of the major southwestern lines appear to be no greater than for the western trunk line group of roads comprised in this comparison, included in which was the Union Pacific with its large overhead traffic.

While the evidence in this record does not warrant a conclusion from an operating viewpoint that the same measure [fol. 1422] of rates as now apply in western trunk line territory should be extended into the southwest, we believe it does justify the inference that, with the exception of Texas differential territory and New Mexico, no material difference exists in the operating conditions of the carriers serving southwestern territory and those serving that part of western trunk line territory situated west of the Missouri River. Whether Texas differential territory should enjoy the same measure of rates as Texas common point territory is open to argument. But, for reasons stated, unless the western extremity of western trunk line territory is to be similarly treated no justification exists for singling out western Texas and New Mexico for a higher level of rates. Furthermore, as previously indicated, and for reasons hereinafter stated, the examiner believes that whatever conclusions may be reached in part 9 of Docket No. 17000, Live Stock, Western District Rates, with respect to the measure of the rates on other kinds of live stock, and the zones within and from which such rates are to apply, these conclusions should influence those reached in the instant cases.

Comparison of Rates under the Southwestern Horse and Mule Scale with Other Rates and Scales in Contiguous Territories

As previously noted, the Texas complainants contend that the rate of progression of the southwestern horse and mule scale, otherwise referred to as the 12358 scale, is too rapid. Perhaps the most representative illustration of this point is to be found in Appendix 8, wherein these complainants compare the southwestern horse and mule scale with the Shreveport scale, and with rates published by the

Missouri-Kansas-Texas for movements from Kansas into Missouri, for movements within Kansas, and for movements from northern and southern Missouri to St. Louis. By reference thereto it will be observed that the rate of progression for distances over 200 miles is more rapid under the southwestern horse and mule scale than under the scales with which compared.

[fol. 1423] As indicative of the disadvantage under which the dealer at Fort Worth labors in making an in-and-out shipment the following examples are given of the inbound charges on a standard car of 23,000 pounds weight from Emporia, Kans., to Kansas City, Mo., and from Great Bend, Kans., to Wichita, Kans., as compared with the charges from the same origins to Fort Worth, and the outbound rates from these three markets to Alexandria, La.:

From Emporia, Kans.

To	Inbound rate			To	Outbound rate			Through	
	Miles	Cwt.	Car		Miles	Cwt.	Car	Miles	Charge
Kansas City	112	..	$53.90	Alexandria La	683	66¢	$151.80	795	$205.70
Fort Worth	440	53½¢	123.05	Alexandria La	352	48	110.40	792	233.45
				From Great Bend, Kans.					
Wichita, Kan	109	..	53.35	Alexandria La	661	65¢	159.50	770	212.85
Fort Worth	482	56¢	128.80	Alexandria, La	352	48	110.40	824	239.20

The above comparisons show that Kansas City has an advantage of $27.75 per car over Fort Worth on an in and out movement from Emporia to Alexandria although the distances are the same, and that Wichita has an advantage over Fort Worth of $26.35 per car on a similar shipment from Great Bend to Alexandria although the difference in distance in favor of Wichita is but 54 miles.

In the following comparison the advantage of Kansas City and St. Louis over Fort Worth in the rates from Denver, Colo., are indicated the comparison also showing what the charges would be under the southwestern horse and mule scale for these distances:

Between Denver, Colo., and			2358 scale	
	Miles	Car	Cwt	Car
Kansas City	640	$118 25	64	$147 20
St. Louis	919	141 90	75	172 50
Ft. Worth	800	161 00	70	161 00

In the following exhibit the Texas complainants compare the rates per car from Kansas origins to Kansas City, Mo., and to St. Louis with what the charges per car would be for the same distances under the southwestern horse and mule scale:

[fol. 1424]

To:	Kansas City		12358 Scale		St. Louis		12358 Scale	
From:	Miles	Rate	Cwt.	Car	Miles	Car	Cwt.	Car
Coffeyville, Kan.	168	$57.00	32	$73.60	418	$110.50	50	$115.00
Chetopa, "	160	53.50	31	71.30	393	105.75*	50	115.00
Parsons, "	137	50.50	29	66.70	381	101.00	50	115.00
Erie, "	121	50.50	27	62.10	403	101.00	52	119.60
Moran, "	96	48.00	24	55.20	354	101.00	48	110.40
Selma, "	79	41.50	24	55.20	338	101.00	47	108.10
Parker, "	62	31.50	23	52.90	350	99.50	48	110.40
Bangor, "	50	30.50	20½	47.15	338	97.00	47	108.10

* Minimum 23,500 pounds.

In the following exhibit similar comparisons are made of the rates from Omaha and St. Louis to Kansas and Oklahoma destinations with rates for the same distances under the southwestern horse and mule scale.

From:	Omaha		12358 Scale		St. Louis		12358 Scale	
To:	Miles	Rate	Cwt.	Car	Miles	Rate	Cwt.	Car
West Wichita, Kans.	373.4	$100.50	50	$115.00	496.3	$116.50	57	$131.10
Waldron, "	442.6	104.00	54½	125.35	565.5	119.00	60	138.00
Aline, Okla.	481.7	128.00	57	131.10	604.6	135.50	63	144.90
Canton, "	516.3	137.50	60	138.00	638.2	143.00	64	147.20
Arapaho, "	557.6	141.00	60	138.00	679.5	147.50	66	151.80
Blair, "	619.9	154.00	63	144.90	741.6	160.50	68	156.40

In the following table, compile from an exhibit introduced by the Texas complainants, the rates under the Southwestern Horse and Mule Scale are compared with the intrastate rates for the same distances in Kansas, Nebraska, and Colorado:

12358

Miles	Cwt	Car	In Kans	In Nebr	In Colo
5	14	$32 20	$17 05	$13 75	$17 05
25	16	36 80	24 20	24 20	32 45
50	20½	47 15	31 35	31 35	45 05
75	24	55 20	37 95	37 95	58 85
100	24	55 20	51 70	51 70	63 25
125	27	62 10	56 10	56 10	75 90
150	30	69 00	61 05	61 05	78 05
175	33	75 90	64 90	64 90	80 30
200	35	80 50	68 20	68 20	83 60
225	38	87 40	72 05	72 05	89 10
250	39	89 70	75 90	75 90	91 85
275	42	96 60	79 75	79 75	95 70
300	44	101 20	81 95	81 95	97 90
325	47	108 10	86 90	86 90	101 20
350	48	110 40	89 05	89 05	105 05
375	49	112 70	95 70	95 70	108 90
400	50	115 00	97 35	97 35	111 05
425	52	119 60	101 20	101 20	
450	53½	123 05	102 85	103 40	
475	55	126 50		106 70	
500	56	128 80		108 90	

[fol. 1425] It will be noted that the intrastate rates in the states above shown are very much lower than the interstate rates for like distances under the Southwestern Horse and Mule Scale.

The foregoing comparisons, and others of a similar nature which it is deemed unnecessary to detail, indicate the disadvantage under which dealers at Fort Worth and Oklahoma City shipping under the Southwestern Horse and Mule scale suffer in competition with those located in Kansas, Missouri, and Nebraska, as well as the subnormal character of the intrastate rates for like distances in the states named.

Scale of Rates Proposed by the Chambers of Commerce of Kansas City and St. Joseph

In Appendix 9 there will be found, among others, two scales of rates entitled: "Kansas City Proposed Scale A", and "Kansas City Proposed Scale B". These scales are proposed by the chambers of commerce of Kansas City and St. Joseph for application in and from the territories here considered. Scale A is for application in southwest

territory, and scale B for western trunk line territory, including within the latter designation Kansas and southern Missouri. The proposed scales progress at a fixed rate of progression of 6 cents for every 100 miles, with rate changes of 2 cents for every 10 miles up to and including 60 miles, and 1 cent for every 10 miles from 60 miles to 110 miles; thereafter the rate of progression is, with minor exceptions, one half cent for every 10 miles up to 240 miles when the progression changes to 1 cent; the blocks change from 10 to 20 miles commencing at 260 miles and to 25 miles at 425 miles, at which distance the rate of progression is 1½ cent for every 25 mile block.

In support of the principle of a fixed rate of progression, the Kansas City and St. Joseph interests refer to the scale prescribed in American National Livestock Asso. v. O. W. R. R. & N. Co., 109 I. C. C. 621.

[fol. 1426] In Appendix 9 there is also set forth for comparative purposes the Southwestern Horse and Mule Scale; the so called "compromise scale" in the Southeast, approved in Livestock to, from, and between Points in the Southeast, 74 I. C. C. 419; and the Texas scale, founded on the scale prescribed in the second Shreveport case, Railroad Commission of Louisiana v. A. H. T. Ry. Co., 48 I. C. C. 312, 351.

Other scales approved by this commission for application throughout the territory under consideration are set forth in Appendix 10, the scales being adjusted by witness for the Kansas City Chamber of Commerce for comparative purposes at certain mileages indicated on the exhibit where the scale was not prescribed for such distances; also, in those instances where the scale was prescribed for application on cattle the horse and mule rates are constructed 115 per cent over the cattle rates, this being the percentage relationship designated by this commission for constructing the horse and mule rates from the rates prescribed on cattle in the South Dakota and the Nebraska Livestock cases, supra. The scales so compared, and the reports wherein found, are in the order in which they appear on the exhibit: The Texas, or Shreveport, scale, Railroad Commission of Louisiana v. A. H. T. Ry. Co., 48 I. C. C. 312, 351; The Northern Missouri Scale, Dimmitt-Caudle-Smith Livestock Commission Co. v. R. R. Co., 47 I. C. C. 287, 321; The Southern Nebraska Scale, Nebraska Livestock Case, 89 I. C. C. 444, 462; Eastern South Dakota Scale, South

Dakota Railroad Commissioners v. C. & N. W. Ry. Co., 77 I. C. C. 451, 460; Southwestern Cattle Scale, American National Livestock Asso. v. A., T. & S. F. Ry. Co., 122 I. C. C. 609; Southeastern "Compromise" scale, Livestock, To, From, and Between Points in the Southeast, 74 I. C. C. 419, 426; Kansas City to Texas and Louisiana Scale, Kansas City Chamber of Commerce v. A. & W. Ry. Co., 89 [fol. 1427] I. C. C. 22, 26; Southwestern Horse and Mule Scale, Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479, 498; and Northwestern Cattle Scale, American National Livestock Asso. v. O.-W. R. R. & N. Co., 109 I. C C. 621, 631.

In Appendix 11 the Kansas City and St. Joseph interests compare the rates of progression for 100-mile blocks of various scales prescribed by this commission and as proposed by them.

Without going into further details of the various exhibits introduced on behalf of the chambers of commerce of Kansas City and St. Joseph it may be said that the scales proposed by these interests produce both increases and decreases as compared with the rates now obtaining from Kansas and Colorado origins; but that the proposed rates are much below the Southwestern Horse and Mule Scale which was prescribed for application from this territory under the original finding in Docket No. 12358. The rates to Chicago from the origins shown are not in issue but are set forth for comparative purposes. It is contended by the Kansas City and St. Joseph interests that if their proposed scale is made effective to the destinations shown, it will result in a more equitable adjustment in the rates to Kansas City as compared with the rates to St. Louis and Chicago.

In the following table, compiled from exhibits of record, there will be found a comparison of the present rates on horses and mules from representative Kansas and Colorado origins to Kansas City, St. Louis and Chicago, together with the charges which would obtain had the Southwestern Horse and Mule Scale gone into effect between the points shown, and the differences in the per car charges to these destinations under the present rates and under those proposed:

[fol. 1428]

Present and Proposed Charges Per Car on Horses and Mules from Kansas and Colorado Origins to Kansas City, St. Louis and Chicago. Together with the Differences Per Car by Which the Present and Proposed Charges to St. Louis and Chicago Exceed Those to Kansas City

From	To	Miles	Present charges per 36' car	No. 12358 scale		Kansas City proposed scale		St. Louis and Chicago over Kansas City per 36' car		
				Rates	Per 36' car	Rate B	Per 36' car	Present	No. 12358	Proposed Scale B
Kansas:										
Belvidere	Kansas City	326	$72.00	47	$108.00	36	$83.00	.....	.....	.....
	St. Louis	604	122.00	63	145.00	52.5	121.00	50.00	37.00	38.00
	Chicago	777	149.00	70	161.00	63	145.00	77.00	53.00	62.00
Garden City	Kansas City	389	92.00	50	115.00	39	89.50	.....	.....	.....
	St. Louis	667	138.00	65	149.50	55.5	127.50	46.00	34.50	38.00
	Chicago	840	165.00	72	165.50	66	152.00	73.00	50.50	62.50
Coolidge	Kansas City	456	98.00	55	126.50	43.5	100.00	.....	.....	.....
	St. Louis	734	141.50	68	156.50	60	138.00	43.50	30.00	38.00
	Chicago	907	165.00	75	172.50	70.5	162.00	67.00	46.00	62.00
Emporia	Kansas City	113	50.00	26	60.00	22.5	52.00	.....	.....	.....
	St. Louis	391	105.00	50	115.00	39	89.50	55.00	55.00	37.50
	Chicago	564	131.50	60	138.00	49.5	114.00	81.50	78.00	62.00
Newton	Kansas City	186	66.50	34	78.00	26.5	61.00	.....	.....	.....
	St. Louis	464	111.50	55	126.50	43.5	100.00	45.00	48.50	39.00
	Chicago	637	138.00	64	147.50	54	124.00	71.50	69.50	63.00
Colorado:										
La Junta	Kansas City	542	106.50	59	136.00	48	110.50	.....	.....	.....
	St. Louis	820	141.50	71	163.50	64.5	148.00	35.00	27.50	37.50
	Chicago	993	165.00	78	179.50	75	172.50	58.50	43.50	62.00
Granada	Kansas City	472	102.50	55	126.50	43.5	100.00	.....	.....	.....
	St. Louis	750	141.50	68	156.50	60	138.00	39.00	30.00	38.00
	Chicago	923	165.00	75	172.50	70.5	162.00	62.50	46.00	62.00
Denver	Kansas City	635	118.50	64	147.50	54	124.00	.....	.....	.....
	St. Louis	913	142.00	75	172.50	70.5	162.00	23.50	25.00	38.00
	Chicago	1,048	165.50	80	184.00	77	177.00	47.00	36.50	53.00

1005

[fol. 1429] There are at present no joint through rates on horses and mules from Kansas City and St. Joseph to destinations east of the Mississippi River, but in view of the commission's decision in White Provision Co. v. A., B. & A. Ry. Co., 118 I. C. C. 601, prescribing joint through rates on cattle and hogs from western markets to the southeast similar action is urged with respect to the rates on horses and mules, although it is recognized that joint rates cannot be prescribed under the issues raised by the complaints in these cases.

While there are no joint through rates on horses and mules to the southeast from Kansas City and St. Joseph, proportional rates are published to the Mississippi River crossings, and the commission is urged to direct the continued publication of such rates on a basis 10 cents under the local rates to the crossings. The present local and proportional rates from Kansas City and St. Joseph to the Mississippi River are as follows:

From Kansas City to	Local rate	Proportional rate
St. Louis	30.5	29.5
Memphis	58	47.5*

*Reduced to per 100 pound basis from $109 per car. It should be noticed in this connection that the examiner's in their proposed report in Docket No. 17000, Part 9, Live Stock, Western District Rates, do not recommend the prescription of either proportional rates from western origins to the Mississippi River or of joint through rates to eastern destinations.

Proposed Scale of Wichita Chamber of Commerce

Horses and mules handled through the Wichita market are distributed mostly in the southeast. In Appendix 12 there is set forth a scale of rates proposed by the Wichita Chamber of Commerce and associated interests for application within the southwest, from the southwest to the southeast, and from Kansas City and Wichita to the south-[fol. 1430] east. This scale is constructed by adding 15 per cent to a proposed fat cattle scale, which in turn is constructed as follows: For distances of 450 miles and less, the 1716 cattle scale prescribed in Investigation of Alleged Unreasonable Rates on Meats, 22 I. C. C. 160, 176, brought down to date by applying thereto the various in-

creases and reductions approved since that decision; for distances over 450 miles to and including 950 miles, the amended Shreveport cattle scale prescribed in Shreveport-Texas Cattle, Lignite, Wood, and Tanbark, 48 I. C. C. 283, 292, and the 2797 scale published in 1919 by the Director General of Railroads, similarly brought down to date; and for distances over 950 miles the northwestern scale prescribed in American National Livestock Asso. v. O.-W. R. R. & N. Co., 109 I. C. C. 621, 631. The carriers in criticism of this proposed scale assert that witness for the Wichita Chamber of Commerce has used those parts of the various scales named which produce the lowest rates for the distances shown:

Witness for the Wichita Chamber of Commerce further points out that this commission in its original decision in No. 11018, The Wichita Board of Commerce Case, supra, found that the rate from Wichita to Memphis was unduly prejudicial to the extent that it exceeded the rate from Kansas City to Memphis by more than $10 per car, which difference (Wichita over K. C.) was by subsequent order increased to $13.50 per car in the rates to Arkansas points on the St. Louis-San Francisco between Wichita and Memphis; that in the subsequent decision in No. 12358, the Southwestern Horse and Mule Scale was prescribed for application to west bank Mississippi River crossings to which was added a fixed arbitrary to make the rates to east bank points; that while the local rates to Memphis have been constructed on the basis of the Southwestern Horse and Mule Scale proportional rates for use in connection with movements to the southeast have been published from [fol. 1431] both Kansas City and Wichita; and that the proportional rate from Kansas City to Memphis does not bear the same relationship to the Kansas City to Memphis local rate as the Wichita to Memphis proportional rate bears to the Wichita to Memphis local rate. For example, the local rate from Wichita to Memphis is 62 cents per 100 pounds, equivalent to $142.60 per standard car, minimum 23,000 pounds. The proportional rate from Wichita to Memphis is $110.50 per standard car, which rate is 77.5 per cent of the Southwestern Horse and Mule Scale rate to Memphis. From Kansas City to Memphis the local rate is 58 cents per 100 pounds, equivalent to $133.40 per standard car, whereas the proportional rate between these points is $91.50, or only 68.6 per cent of the local rate from Kansas

City to Memphis. If the same percentage relationship which the proportional rate from Kansas City to Memphis bears to the local rate between these points were applied to the local rate from Wichita to Memphis to obtain the proportional rate from that point to Memphis it would result in a rate of $97.82, instead of $110.50. Conversely, if the percentage relationship which the Wichita to Memphis proportional rate bears to the Wichita to Memphis local rate were applied to the local rate from Kansas City to Memphis to obtain the proportional rate from Kansas City it would result in a rate of $103.40, instead of $91.50. Furthermore, this witness stresses the point that the spread in the proportional rates, Wichita over Kansas City, is $19; whereas if the proportional rate from Wichita to Memphis was constructed on the same percentage relationship that the proportional rate bears to the local rate from Kansas City to Memphis the spread between Wichita and Kansas City would be only $6.32. This spread in the proportional rates the Wichita Chamber of Commerce claims works a hardship on the Wichita dealer, as the proportional rates are used in constructing through rates to the Southeast.

[fol. 1432] In Appendix 13 witness for the Wichita Chamber of Commerce compares the rate of progression for 100 mile blocks of his proposed scale with various other scales. The scales with which comparisons are made, in the order in which they appear on the exhibit, — as follows: Column 30 or class C rates, prescribed in the Consolidated Southwestern Cases, 123 I. C. C. 203; the witness's proposed fat cattle scale; the Southwestern Horse and Mule Scale; the 2797 or Director General's scale; the 15686 or Southwestern Cattle Scale, prescribed in American National Livestock Association v. A., T. & S. F. Ry. Co., supra, for application on livestock between points in the southwest, including Kansas and Missouri, which formerly were accorded rates based on the Shreveport Cattle Scale; the 1716 scale, prescribed in Investigation of Alleged Unreasonable Rates on Meats, supra, with subsequent rate changes; and the Shreveport Cattle Scale, prescribed in I. & S. No. 958, Shreveport-Texas Cattle, Lignite, Wood and Tanbark, supra.

Prior to April, 1917, southbound rates to Texas points were on the class C basis, at which time they were increased to class A basis. As a consequence of the revision

in the class rates made in the Consolidated Southwestern Cases, supra, the present class C or column 30 rates are lower than the Southwestern Horse and Mule Scale. This fact witness for Wichita Chamber of Commerce advances as evidence of the unreasonableness of the Southwestern Horse and Mule Scale.

The South Dakota Proposed Scale

The rate situation in South Dakota presents a somewhat different problem from that involved in the southwestern and western trunk line states, herein previously discussed, in that shipments from South Dakota origins move mostly to destinations in Iowa, Minnesota and Illinois, and not to [fol. 1433] the southwest or southeast. A compilation of carload shipments from South Dakota made by the Director General of Railroads for the year 1918 shows that of 1093 cars of horses and mules shipped in that year 438 moved to various stations mostly in the three states above named, 309 cars went to Sioux City, Ia., and 157 to East St. Louis for reforwarding to eastern destinations; and of the remainder only 4 cars went to Kansas City. There was no movement to Fort Worth or other southwestern market. It is, therefore, the contention of the South Dakota interests that in any adjustment which may be made in the rates from this state, they should be made with relation to the rates from Minnesota and Iowa; and that as the rates from the two latter states are not in issue a satisfactory disposition can not be made on this record of the rate situation with respect to South Dakota. Moreover, it is strongly urged that the rates on horses and mules should be related to the cattle scale to be prescribed in Part 9 of Docket No. 17000, Live Stock, Western District Rates; and, therefore, that report in these proceedings should be withheld until decision has been reached in that case.

The evidence introduced by witness for the Railroad Commission of South Dakota shows a marked decline in the value of the horses raised in that state. For the year 1925 the average price was $46 per head or less than fifty per cent of the price for 1916. It must be observed, however, that the latter year was a war year; but from other evidence it is apparent that the value of horses has declined from the prices previously obtained whereas other types of livestock have increased in value. Thus, the aver-

age price of horses in the United States, for the year 1925, according to records of the United States, Department of Agriculture, was $62.95 as compared with $108.19 for the year 1910, a decline in value of 58 per cent. Similar comparisons show that the price of cattle increased 126 per [fol. 1434] cent, hogs 135 per cent and sheep 233 per cent over the average of the prices obtained in 1910.

Considerable evidence was introduced on behalf of the Railroad Commission of South Dakota for the purpose of proving that both from a density of traffic and operating standpoint, as well as economically, South Dakota is entitled to the same rate treatment as Minnesota and Iowa. To that end various cost studies were submitted, the most important of which probably is reproduced in Appendix 14. This consists of a statement intending to show for the year 1927 the operating, maintenance and general expenses per mile of road for those portions of the lines of railroad situated within the State of South Dakota as distinguished from the remainder of the system located outside of that state. The statement shows that the total operating and maintenance costs per mile of road in South Dakota for the five principal railroads operating in and through that state as compared with the remainder of the roads operating outside of the state, together with the percentage relationship that the costs of operation within South Dakota bore to similar costs for the remainder of the systems, were as follows:

[fol. 1435] Operating and Maintenance Costs Per Mile of Road

Carrier	Portion within South Dakota	Remainder of system	Per cent S. Dak. is of remainder
Minneapolis & St. Louis	$3,014.88	$8,807.68	34.2
Chicago, Burlington & Quincy	5,746.44	12,094.50	47.5
Chicago & Northwestern	5,377.38	15,259.49	35.2
Chicago, Milwaukee & St. Paul	6,537.29	12,936.25	50.5
Chicago, St. Paul, Minneapolis & Omaha	6,275.98	12,812.10	49.

The formula by which the costs for operation and maintenance within the state of South Dakota are segregated from the costs for the system as a whole for the lines shown above is not stated, but it is obvious that a division of costs on the basis of interstate and intrastate operations must be, at the most, only an approximation. For instance, the cost of maintenance of equipment can not be accurately apportioned between interstate and intrastate traffic, nor

should the cost of maintenance of terminals and repair shops be apportioned only to the divisions within which they are located, for the services performed both by the equipment and by the repair shops and terminals is for the benefit of the system in its entirety. By such methods, however, and through charging only to state operations the expenditures made solely within that state, it is possible to show the average cost of operation within a state to be much below the average for the part of the system operating without the state. Whether that has been done in the present instance we have no means of determining, but it would appear that such figures as are shown for the cost of maintenance of equipment on the various lines appearing in Appendix 14 need explanation. For example, the cost of maintenance on the Minneapolis & St. Louis within South Dakota for the year 1927 is placed at the nominal figure of $151,837.03, or $588.40 per mile of road for the 258.5 miles of road operated within that state, while for the remainder of the system, comprising 1,369.75 miles of [fol. 1436] road, it is shown to be $2,992,724.95, or $2,184.87 per mile of road. The disparity in these figures would seem to indicate that only the actual costs expended within the state of South Dakota for maintenance have been allocated to the cost of maintenance of equipment within that state.

By other comparisons witness for the Board of Railroad Commissioners of South Dakota endeavors to prove that the density of traffic on the divisions of the lines serving South Dakota compares favorably with similar divisions of the same line located in Minnesota and Iowa. For example, the following figures give the density of the traffic on divisions of the Chicago, Milwaukee & St. Paul for the years 1926, 1925 and 1924:

Division	Traffic Density in Tons Per Mile of Road		
	1926	1925	1924
Des Moines	187,191	189,719	216,302
Iowa	1,625,343	1,584,641	1,652,821
Dubuque	1,216,823	1,221,125	1,228,989
Kansas City	2,144,865	1,933,305	1,774,991
Sioux City & Dakota	511,128	526,974	587,475
La Crosse	2,846,628	3,087,974	2,754,118
Wisconsin Valley	397,249	404,143	404,271
Madison	417,745	377,121	399,705
River	2,099,058	2,327,611	2,116,320
Iowa & Minnesota	523,678	497,869	476,861
Iowa & Dakota	452,509	477,564	517,171
Hastings & Dakota	1,409,237	1,710,096	1,705,241
Aberdeen	866,723	902,530	890,361
Southern Minnesota	189,581	202,793	257,502
Trans-Missouri	908,772	1,003,586	956,818

By omitting comparisons with divisions carrying large overhead traffic, such as the Iowa and Kansas City divisions, which it is contended are not indicative of actual conditions within the state which they traverse, the witness is able to make favorable comparisons of traffic density over certain South Dakota divisions with other divisions located within the states of Iowa and Minnesota. Thus, our attention is directed to the low traffic density of the Des Moines, Southern Minnesota, Iowa & Dakota and Iowa & Minnesota divisions, which the witness contrasts with the [fol. 1437] density shown for the Aberdeen, Trans-Missouri and Hastings & Dakota divisions. However, it is to be noted that the Iowa & Dakota division, which shows a traffic density of 452,509 tons for the year 1926, extends over the entire southern portion of the state of South Dakota, and that the Southern Minnesota division extends into the eastern half of that state. Also, it is to be noted that the Aberdeen division is a main line division on the transcontinental route of the Milwaukee, and if the Iowa division is not to be compared because of overhead traffic for similar reasons the Aberdeen division should not be used for comparison.

In the following table similar comparisons are made of operating divisions of the Chicago & Northwestern in South Dakota with other divisions operating within Minnesota, South Dakota and Nebraska. In these comparisons we are asked to ignore the eastern division located in Nebraska, and comprising part of the main line entering Omaha, and the Iowa division forming a part of the through route to Chicago:

Traffic Density for 1926 on Representative Operating Divisions of the Chicago & Northwestern in Minnesota, Iowa, South Dakota and Nebraska

Division	Miles of Road		Traffic Density-Per Mile of Road		
	Main	Branch	Main	Branch	Total
Sioux City (1)....	115.46	342.78	987,000	138,000	352,000
Minnesota (2)....	230.50	269.38	763,000	63,000	386,000
Iowa (3)....	362.73	206.73	2,885,000(A)	211,000	2,278,000
Eastern (4)....	273.28	619.50	1,082,000	148,000	434,000
Dakota (5)....	381.15	460.70	518,000	154,000	319,000
Black Hills (6)....	464.10	123.99	799,000	105,000	652,000

(A) Iowa Division Figures are based on per mi. of track-reflecting double track main line mileage.

(1) All mileage in Iowa. (2) 465.40 mi. in Minnesota; 34.48 mi. in S. Dak.
(3) 562.92 mi. in Iowa; 5.66 mi. in Nebr. and .88 mi. in Illinois.
(4) 826.38 mi. in Nebr.; 4.82 mi. in Iowa and 61.58 miles in So. Dak.
(5) 755.77 mi. in So. Dak. (Eastern); 71.80 mi. in Minn. and 14.28 mi. in N. Dak.
(6) 378.62 mi. in So. Dak. (West); 209.47 mi. in Nebraska (West).

By other comparisons witness for the Board of Railroad Commissioners of South Dakota shows that the value of [fol. 1438] the property of the carriers located within the state is much less per mile of road than is the value per mile of road of the same carriers situated outside of the state. For example, the property value for the year 1925 of the Chicago & Northwestern road, land and equipment located within the state of South Dakota amounted to $31,123 per mile for the 1230 miles of road within that state as compared with a valuation of $77,148 per mile for the remaining 7238.87 miles of road situated without that state, the percentage of value without the state to that within being 248 per cent. Similar comparisons for 1925 for other lines of railroad serving South Dakota are as follows:

	(A) Within South Dakota		(B) Without South Dakota		Per cent (B) is to (A)
Carrier	Miles	Value per mile	Miles	Value per mile	
C. B. & Q.	259.88	43,935	8,801.00	67,612	154
C. M. & St. P.	1,800.65	30,737	8,043.91	70,267	229
C. St. P. M. & O.	88.20	3,302	1,588.51	11,087	190
C. R. I. & P.	83.14	19,428	7,033.19	55,248	284
Great Northern	364.61	23,024	7,577.77	66,797	264
M. & St. L.	257.05	18,007	1,256.54	44,381	246
M. St. P. & S. S. M.	108.49	14,388	3,168.83	38,608	268

By another exhibit, witness for the Board of Railroad Commissioners of South Dakota compares the population per square mile, population per mile of railroad, value of the livestock, value of crops, value of the farm property, and acreage of corn, wheat and oats of eastern South Dakota counties with those of southern Minnesota. These comparisons indicate that the productivity of the counties of eastern South Dakota compare very favorably with those in southern Minnesota.

We deem it unnecessary to detail further other cost studies introduced by witness for the Board of Railroad Commissioners of South Dakota. We conclude, as this commission has said in other cases, that operating and transportation conditions in eastern South Dakota are as favor- [fols. 1439 & 1440] able to the carriers as those in the neighboring states. The following expression of this commission on page 458 of the original decision in the South Dakota Live Stock Case, supra, is in our opinion an accurate con-

clusion with respect to the traffic and transportation conditions of eastern South Dakota as compared with the adjoining states to the east and south:

Moreover, as we have had occasion in other cases to remark, traffic, and transportation conditions, are not radically different in eastern South Dakota from what they are in the adjoining portions of Minnesota, Iowa, and Nebraska. There is also some evidence that the lighter traffic density in South Dakota, as a whole, is offset, to an extent at least, by relatively lower operating expenses; and by a lower value of carrier property per mile of line than in most of the other States in the same general territory.

Proceeding to a consideration of the rate situation in South Dakota, we find many inconsistencies in the rates from that state in their relation to the rates from nearby points in adjacent states to the primary cattle markets. For example, the rate from Alcester, S. D., to South Omaha, a distance of 149 miles is 29.5 cents, while the rate from Hawarden, Ia., to South Omaha, a distance of 140 miles, is 22.5 cents. Thus, the rate from Alcester to South Omaha is 7 cents higher than the rate from Hawarden for a distance but 9 miles longer, or stated another way, the rate from Alcester to South Omaha is 31 per cent greater than the rate from Hawarden to the same point, while the mileage is only 6.4 per cent longer. This difference is due to the lower measure of the rates applying within Iowa. A similar situation exists when we consider the rates from South Dakota to South St. Paul as compared with neighboring origins in southern Minnesota. For example, the rate from from Ortonville, Minn. to South St. Paul is 26 cents, from Milbank, S. D., to South St. Paul the rate is 32 cents, a difference of 6 cents per 100 pounds for a difference in distance of only 11 miles. Other maladjustments are shown in the rates from South Dakota origins to primary markets as compared with the rates from origins in adjacent states.

In the following table witness for the Board of Railroad [fol. 1441] Commissioners of South Dakota compares the rates on horses and mules under the South Dakota scale for 50, 100, 200, and 300 miles with like rates for the same distances obtaining in Minnesota, Illinois, Nebraska and Iowa:

Distance	Rate cwt.	Per car of 23,000 pounds
50 Miles		
No. 12268 Scale	17.5	$40.25
Minnesota	...	36.00
Illinois	14.0	32.20
Iowa	...	24.84
100 Miles		
No. 12268 Scale	23.0	52.90
Minnesota	...	45.00
Illinois	17	39.10
Nebraska	...	47.00
Iowa	...	31.30
200 Miles		
No. 12268 Scale	32	73.60
Minnesota	...	59.50
Illinois	22	50.60
Nebraska	...	62.00
Iowa	...	38.65
300 Miles		
No. 12268 Scale	37.0	85.10
Minnesota	...	68.00
Illinois	26.5	60.95
Nebraska	...	74.50
Iowa	...	47.85

It will be observed from the above table that the intrastate rates for the distances shown are considerably below the interstate rates prescribed for the same distances under the South Dakota scale.

In the following table witness for the Board of Railroad Commissioners of South Dakota compares rates from South Dakota origins to Sioux City, Iowa, with rates for comparable distances from points in neighboring states to the primary markets of St. Paul, Kansas City, and Omaha:

[fol. 1442]

S. Dak. to Sioux City, Ia.

(From CM&StP)	Miles	Rate
Elk Point, S. D	21	$32.70
Yankton	62	45.55
Scotland	89	51.39
Mitchell	127	64.24
Chamberlain	204	78.26
Oacoma	208	84.10
Presho	244	86.43
Okaton	290	94.61
Interior	351	102.78
Rapid City	423	112.13

Minn. & No. Dak. to St. Paul, Minn.

(From GN Sta.)	Miles	Rate
Howard Lake, Minn	83	$30.80
Willmar	102	45.00
Hancock	149	52.80
Campbell	200	60.00
Rustad	250	68.00
Bedford, N. D.	302	83.00
Sutton	348	83.00
Bremen	398	98.00
Guthrie	448	102.00
Minot	495	104.80

Kansas to Kansas City, Mo.

(From ST&SF Sta.)	Miles	Rate
LeLoup, Kansas	49	$26.00
Neosho Rapids	101	43.00
Cedar Point	150	52.00
Paxton	199	61.00
Raymond	248	61.00
Kinsley	302	69.00
Sears	351	76.00
Garden City	398	83.50
Medway	454	89.00

Nebraska to Omaha, Nebraska

(From CB&Q Sta.)	Miles	Rate
Havelock, Nebraska	80	$35.04
Waco	99	46.72
Grand Island	147	60.74
Mason	204	68.91
Gavin	251	72.42
Norway	301	74.75
Duluth	350	86.43
Antioch	401	91.10
Maraland	451	101.62
Mansfield	496	109.79

In the following table witness for the South Dakota Commission compares the earnings per car and per car mile on horses for the average length of haul on the western railroads named in the table computed on the average loadings for the year 1924, with the average for 59 western railroads as shown in Wettling's exhibits 34 and 43 introduced on behalf of the carriers in Ex Parte 87, Revenues in Western District, 113 I. C. C. 3:

Average Earnings Per Car, Per Car Mile, and Per Ton Mile on Horses on Representative Western Lines Compared With Earnings Under 12268 Scale for Comparable Hauls

Railroads	Avg. haul Miles	Earnings			Earnings under 12268 Scale		
		Per car Dolls.	Car mi. Cents	Ton mi. Mills	Per car Dolls.	Car mi. Cents	Ton mi. Mills
CNW	224	$62.68	28.0	24.3	$77.05	34.4	29.9
CSTPMO	115	36.28	31.6	30.1	58.65	50.9	48.3
CGW	130	39.70	30.6	27.2	60.95	45.9	40.8
N. P.	294	77.02	26.2	22.6	85.84	29.2	25.2
CRI&P	213	67.57	31.7	27.6	77.05	36.2	31.5
CM&STP	271	71.04	26.2	22.4	83.07	30.7	26.2
M&STL	138	48.54	35.1	28.9	66.88	48.5	39.9
CB&Q	245	59.03	24.1	20.9	79.56	32.5	28.2
59 W. RRs	226	64.36	28.5	24.4	80.59	35.6	30.5

[fol. 1443] The average loading of horses and mules per car for the carriers above named range from 10½ tons,

which is the minimum weight for the Chicago, St. Paul, Minneapolis & Omaha, to 12.16 tons for the Minneapolis & St. Louis. The average loadings of horses and mules for the 59 western roads in 1924 was 11.68 tons.

In a previous part of this report we outlined various contentions of the parties and there detailed the suggested division of western trunk line territory as prepared by the Board of Railroad Commissioners of South Dakota. It will be observed that the Board's dividing line between their proposed Districts No. 1 and No. 2, follows mostly along the Missouri River through the State of South Dakota. This river also was used by this Commission as a boundary line for the 12268 scale prescribed in the South Dakota Live Stock case, supra. Instead of prescribing arbitraries, as in the South Dakota Live Stock case, supra, for shipments originating west of the Missouri River, the Board of Railroad Commissioners of South Dakota proposes that the rates from District No. 2 should be made 10 per cent over the rates from District No. 1. On shipments moving intraterritorially the rate would be constructed according to the following rule: Add to the rate applicable in the lower rated territory for the entire distance from origin to destination the difference or differences between the rates in the higher and lower rated territories for the distance or distances traversed in the higher rated territory or territories. For example, for a movement of 600 miles between District No. 1 and District No. 2 territories, divided 400 miles in the former and 200 miles in the latter, the rate would be constructed by using the rate applicable for 600 miles in District No. 1 territory, to which would be added the difference between the respective rates for 200 miles in Districts No. 1 and No. 2 territories.

In Appendix 15 there is set forth the proposed scale of the Board of Railroad Commissioners of South Dakota for [fol. 1444] Disfrict No. 1. This scale they compare with the 12268 scale prescribed by this Commission in the South Dakota Live Stock case, supra, for eastern South Dakota, and the scale prescribed in the Dimmitt-Caudle-Smith case, supra, for northern Missouri revised to date. In the latter case the rates on horses and mules were directed to be constructed by taking 120 per cent of the rates prescribed for cattle. In Appendix 15 here is also

shown the maximum scales in effect in Iowa, Minnesota, and Northern and Southern Nebraska. There is also set forth for comparative purposes the averages of these various scales for 50 and 100 mile blocks. Thus, for distances up to 100 miles the present 12268 scale averages 20.7 cents, the South Dakota proposed District No. 1 scale averages 19.6 cents, the Dimmitt-Caudle-Smith scale averages 18.8 cents, the Iowa scale 15.8 cents, the Minnesota scale 17.6 cents, the Northern Nebraska scale 19.6 cents, and the Southern Nebraska scale 18.2 cents. By comparison it will be observed that the Board of Railroad Commissioners of South Dakota proposed District No. 1 scale is below the 12268 scale for 700 miles and under, and that over that distance it is slightly higher, but that it is higher than the Dimmitt-Caudle-Smith scale and the state scales for Iowa and Minnesota. It is lower than the Nebraska scales for the longer distances, but higher than the Southern Nebraska scale for distances under 400 miles.

[fol. 1445] Carriers' Proposals

Southwestern Lines:

The Southwestern lines propose column 45 or Class A rates as prescribed in the Consolidated Southwestern Cases, 123 I. C. C. 203, for both joint and single line application throughout the southwest, including within that description Kansas and Missouri south of the line of the Rock Island from Kansas City to St. Louis, but excluding therefrom Texas differential territory, New Mexico and eastern Colorado. For hauls within Texas differential territory and from Colorado to differential territory they propose to apply to the column 45 rates the differentials provided for Texas differential territory in the Consolidated Southwestern Cases, and for interterritorial movements between Texas differential territory and New Mexico on the one hand and Southwestern territory on the other the carriers propose to add to the column 45 rates differentials constructed on the length of haul in differential territory.

In Appendix 16 there will be found a comparison of the southwestern lines proposed scale for distances from 5 to 1000 miles with the southeastern or so-called "compromise" scale increased by 10 per cent. The "compromise" scale, approved in Live Stock to, from, and between Points in

the Southeast, 74 I. C. C. 419, is increased by 10 per cent for comparative purposes because this commission in its report in the Consolidated Southwestern Cases prescribed rates for application in the southwest which are approximately 10 per cent higher than the corresponding rates applicable within Southern territory. In Appendix 16 comparison is also made of the Southwestern Lines' proposed scale with the present Southwestern Horse and Mule Scale.

Numerous exhibits were introduced by the carriers to prove that the rates on horses and mules in the Southwest and western trunk line territory are too low. One of the [fol. 1446] most representative of these is attached hereto as Appendix 17. In this exhibit the revenues per car, per gross car-mile, and per gross ton-mile returned on a carload of horses and mules from Kansas City to Fort Worth, computed on the basis of the proposed column 45 rates and minimum weight of 23,000 pounds, are compared with similar earnings yielded by 37 different commodities shipped between the same points under the rates and ratings prescribed in the Consolidated Southwestern Cases, supra. The average weights used in the exhibit are for actual shipments made over the Fort Worth & Denver City for the first six months of 1928; and where minimum weights are used they are so indicated on the exhibit. The empty mileage shown in column 4 of the exhibit is derived by multiplying the distance between Kansas City and Fort Worth by the percentage of empty car movement to the loaded car movement as determined by a study which was made for the month of October, 1926 of the loaded and empty car movement on 35 western railroads. This study demonstrated that the empty car haul of stock cars averaged 88.12 per cent, box cars 24.47 per cent, refrigerator cars 66.85 per cent, and poultry cars 97.07 per cent of the total haul. The gross ton-miles shown in column 8 of the exhibit are derived by adding to the gross ton-miles of the loaded haul the gross ton-miles of the empty haul, using weights of 16 tons for stock cars, 19 tons for box cars, 26 tons for refrigerator cars and 20 tons for poultry cars. The gross car-miles set forth in column 10 are arrived at by determining the gross car-miles of the empty haul and adding thereto the gross car miles of the loaded haul and dividing the revenue per car by this total. While the results of these computations are in a measure theoretical, inasmuch as they do not

represent the exact percentage of empty movement of actual shipments between Fort Worth and Kansas City, they are as nearly accurate as it is possible for the carriers to obtain. The criticism of this exhibit, which criticism ap-
[fol. 1447] plies to practically all of the exhibits submitted by the carriers bearing on the contention that the rates on horses and mules are too low, is that the comparisons are with commodities that are not in any way comparable. For example, there is nothing comparable between a carload of horses and mules and a carload of butter, green coffee, or scrap iron. However, as an abstract proposition, it may be said that this exhibit indicates the southwestern carriers would not receive excessive returns if the scale proposed by them were prescribed by this commission. But there are many other considerations besides the relative return to the carriers which must be considered before the measure of the rates to be applied as maximum reasonable rates on horses and mules can be determined. For instance, to prescribe rates which would return to the carriers revenues per car equal to those returned by most of the commodities listed in Appendix 17 would require, because of the low loadings of these animals, rates so high that hauls of any measurable distance could not be made. This limitation on the measure of the rates which can be prescribed is not confined to horses and mules only, but applies with equal force to other kinds of live stock.

That the proposed rates of the southwestern lines will result in material increases over the existing rates on horses and mules is recognized by the carriers. The extent of these increases is illustrated in Appendix 18, wherein the per car earnings under the present Southwestern Horse and Mule Scale for both single and joint line hauls from 5 to 1500 miles are compared with the per car returns for the same distances under the proposed scale.

Comparison is also made with the rates on horses and mules from various points in central territory to Buffalo, and the percentage relationship that these rates bear to the first class rates from and to the same points. These comparisons show that the horse and mule rates from Michi-
[fol. 1448] gan, Ohio, Indiana and Illinois to Buffalo range from 68.1 per cent to 82.9 per cent of the first class rates. By similar comparison it is shown that the rates from Kansas origins to Kansas City are only 25 per cent of first class

and from the same origins to St. Louis only 30 per cent of first class. The extent of the movement under the central territory rates is not stated, but very likely it is small. In fact, horses and mules move generally on second class rates in central territory. Moreover, it should not be overlooked that the rates we are considering are those applying from the main producing area of the United States, and that the central and southern states are not large producers of horses and mules or other forms of live stock. Therefore, the rates west of the Mississippi River on horses and mules, as well as those on live stock in general, might properly be lower than in the East and South without violating the principle stressed throughout this case by the carriers that the rates west of the Mississippi are usually on a higher level than those east of that river.

The southwestern lines maintain that their present proposal is practically the same as the 9702 Class B scale previously proposed by them on brief. However, the present proposal of these carriers represents a slight increase over their previous proposal inasmuch as the scale is higher than the average of the 9702 Class B joint and single line scales, and would apply to single as well as joint line hauls, as will more particularly appear from an examination of Appendix 19. Moreover, it will be observed from the comparisons shown in this exhibit that the present 12358 or Southwestern Horse and Mule Scale is much lower than both the former and present proposed scales of the southwestern lines.

That the scale proposed by the southwestern lines will result in material increases is amply illustrated by the comparisons set forth in Appendix 20, which are compiled [fol. 1449] from an exhibit introduced by one of the carriers. In this exhibit there is shown the present and proposed charges per car, and the earnings per car-mile, on horses and mules from representative Kansas origins to Kansas City and St. Louis. These earnings the carriers compare with those yielded from and to the same points on wheat, corn, brick, cement, window glass, refined oil, agricultural implements, machinery, canned goods, potatoes, and roofing material—all heavily loading commodities and possessing no comparable characteristics.

Western Trunk Lines:

In a previous part of this report there is outlined the three groups into which the western trunk line carriers suggest that western trunk line territory should be divided. In Scale I territory the base scale will apply, while in Scale II and Scale III territories rates 110 and 115 per cent, respectively, over Scale 1 rates are to apply. Intraterritorially it is proposed that the highest scale should apply. The scale proposed for Scale I territory is 45 per cent of the first class scale proposed by the western trunk lines in Part 2 of Docket No. 17000, Western Trunk Line Class Rates. The three scales proposed by these carriers are set forth in Appendix 21. In applying the rates the single line mileage is to be used unless by combination of not to exceed three lines the single line mileage can be reduced by more than one block, in which case the combination mileage will be used. Where there is no single line mileage between origin and destination the combination mileage over two lines will be used, or the combination mileage over three lines where such mileage reduces the two line mileage by more than one mileage block. In computing combination mileages only the regular routes over which the traffic ordinarily moves will be used.

[fol. 1450] Should the suggestions of the carriers be adopted and the scale proposed by the western trunk lines be published for application in Nebraska and the scale proposed by the southwestern lines be established in Kansas an indefensible rate situation would follow in that the rates to Kansas City from stations in northern Kansas on the Chicago, Rock Island & Pacific would greatly exceed those to Omaha for like distances from stations in southern Nebraska on the paralleling line of the Chicago, Burlington & Quincy.

The southwestern lines' and western trunk lines' proposed scales with their varying rates for like distances are shown in the following table:

The Railroads' Proposed Scales

Miles	Southwestern Proposed	W. T. L. Proposed Scale 1
5	16	16
25	21	19
50	26	23
75	32	27
100	36	32
150	44	36
200	49	41
250	55	46
300	60	50
350	66	54
400	71	58
450	75	63
500	78	66
550	83	71
600	86	74
650	91	79
700	94	82
750	99	87
800	102	90
850	105	95
900	108	98
950	111	103
1000	114	106
1050	117	111
1100	120	114
1150	123	119
1200	126	122
1250	129	127
1300	131	131
1350	135	135
1400	137	139
1450	140	143*
1500	143	147*

*Extended on same progression as scale.

[fol. 1451] In support of their contention that the present rates on horses and mules under the Nebraska and South Dakota scales are too low the western trunk lines introduced numerous comparisons. In the following table the charges per car on horses and mules from Nebraska stations to South Omaha are compared with like rates from equidistant Iowa stations to Chicago:

From	To	Miles	Charge per car	
Ainsworth, Nebr	So. Omaha	256	(1)	78.20
Belle Plaine, Ia	Chicago	253		98.50
Atkinson, Nebr	So. Omaha	208	(1)	72.45
Anamosa, Ia	Chicago	209		78.50
Battle Creek, Nebr	So. Omaha	123	(1)	58.65
Clinton, Ia	Chicago	138		63.50
Bassett, Nebr	So. Omaha	239	(1)	75.90
Watkins, Ia	Chicago	238		94.00
Cody, Nebr	So. Omaha	340	(1)	85.00
Cartersville, Ia	Chicago	348		109.50
Creighton, Nebr	So. Omaha	154	(1)	63.25
De Witt, Ia	Chicago	156		63.50
Gordon, Nebr	So. Omaha	393	(1)	89.70
Carrol, Ia	Chicago	392		117.50
Kilgare, Nebr	So. Omaha	325	(1)	81.90
Ames, Ia	Chicago	326		109.50
Long Pine, Nebr	So. Omaha	248	(1)	75.90
Belle Plaine, Ia	Chicago	253		98.50
Merriman, Nebr	So. Omaha	365	(1)	87.40
Des Moines, Ia	Chicago	358		111.50
Newmans Grove, Nebr	So. Omaha	123	(1)	52.90
Clinton, Ia	Chicago	138		63.50
Valentine, Nebr	So. Omaha	303	(1)	82.80
Eldora, Ia	Chicago	313		105.50
Wood Lake, Nebr	So. Omaha	277	(1)	80.50
Voorhies, Ia	Chicago	288		104.00

(1) Rate in cents per hundred pounds changed to dollars per car using 23,000 minimum weight.

In the above comparisons it will be observed that the per car return on shipments from Nebraska origins to South Omaha are considerably below those from Iowa origins to Chicago.

[fol. 1452] In the following table, which is typical of numerous others introduced by the carriers, the proposed rates on horses and mules and earnings thereunder from Aberdeen, S. Dak., to Sioux City, are compared with the rates and earnings from and to the same points on brick, cement, automobiles, agricultural implements, soap, canned goods, iron and steel, wheat, corn, scrap iron, fertilizer in central territory, and green salted hides:

To Sioux City, Iowa

From	Dist.	Weight	Rate	Earnings P. C.	Earnings P. C. M.		Commodity
Aberdeen, S. Dak.	265 (Via CMStP&P)	11.5	53	121.90	.46		Horses & Mules
		35.6	14	99.68	.38		Brick (11672 Scale)
		38.7	16.5	127.71	.48		Cement
		6.9	100.5	138.69	.52	(1)	Autos
		14.1	41.5	117.03	.44	(a)	Agricultural Implements
		22.4	41.5	185.92	.70	(5)	Soap
		23.8	41.5	197.54	.75	(5)	Canned Goods
		32.1	41.5	266.43	1.01	(5)	Iron and Steel
		41.5	22.5	186.75	.70		Wheat
		39.6	20.5	162.36	.61		Corn
		22.4	26	116.48	.44	(5)	Scrap Iron
		28	20	112.00	.42		C. F. A. Fertilizer
		43.4	41.5	194.22	.73	(5)	Green Salted Hides
Parker, S. Dak.	93 (Via C. & N. W.)	11.5	34	78.20	1.90		Horses and Mules
		35.6	9.5	67.64	.73		Brick (11672 Scale)
		38.7	11.5	89.00	.96		Cement
		6.9	56.5	77.97	.84	(1)	Autos
		14.1	23	64.86	.70	(a)	Agricultural Implements
		22.4	22	98.56	1.06	(5)	Soap
		23.8	22	104.72	1.13	(5)	Canned Goods
		32.1	22	141.24	1.52	(5)	Iron and Steel
		41.5	14.5	120.35	1.29		Wheat
		39.6	13	102.96	1.11		Corn
		22.4	14.5	64.96	.70	(d)	Scrap Iron
		28	12	67.20	.72		C. F. A. Fertilizer
		23.4	22	102.96	1.11		Green Salted Hides

(1) 1st Class (a) Class A (5) Fifth Class (d) Class D

That the western trunk lines' proposed rates will result in material increases over the present rates is illustrated by the following table, which shows the present and proposed rates from representative South Dakota origins to Chicago:

[Ex. 1453]

Comparison Present Horse and Mule Rates with Proposed Rates to Chicago

From S. Dakota	Miles	Present	Proposed
Yankton	(1) 869	47	79
Centerville	(1) 841	46	78
Sioux Falls	(2) 848	*178 80	71
Mitchell	(3) 611	49 5	83
Wolsey	(1) 650	51	87
Watertown	(1) 703	48 5	81
Redfield	(1) 604	51	88
Lake Preston	(1) 604	49 5	83
Aberdeen	(3) 608	52 5	90
Parker	(3) 861	47	79

* Per Car
(1) C. & N. W.
(2) Ill. Cent.
(3) C. M., St. P. & P.

In the following tables the Board of Railroad Commissioners of South Dakota show the amounts by which the proposed rates on horses and mules would exceed the present rates from representative South Dakota origins to the markets named, and the percentages by which the present rates will be increased, if the proposed rates become effective:

To Chicago	Present	R. R.'s proposed	Amount of increase Cents cwt.	Per cent
Yankton	47	79	32	68
Madison	48 5	81	32 5	67
Milbank	48 5	84	35 5	73 1
Chamberlain	52 5	88	35 5	67 6
Aberdeen	52 5	90	37 5	71 4
Murdo	58	100	42	72 4
Lemmon	63 5	113	49 5	77 9
Rapid City	66 5	113	46 5	69 9
To Sioux City				
Mitchell	27 5	40	12 5	45 5
Aberdeen	35 5	53	17 5	49 2
Milbank	37	55	18	48 6
Mobridge	39 5	62	22 5	56 9
Rapid City	48	70	26 5	45 8
Lemmon	47 5	74	26 5	55 7

[fol. 1454]

	Present	R. R.'s proposed	Amount of increase Cents cwt.	Per cent
To Omaha:				
Rapid City	50.5	82	31.5	62.3
Lemmon	51.5	87	35.5	68.9
To Kansas City:				
Mitchell	45.5	67	21.5	47.2
Aberdeen	48.5	78	29.5	60.8
Rapid City	57.5	97	39.5	68.6
Lemmon	59	100	41	69.4
To St. Paul:				
Aberdeen	37	55	18	48.6
Lemmon	49	76	27	55.1

[fol. 1455] Should the Rates on Horses and Mules be Related to the Rates on Cattle

In attempting to reach a proper conclusion with respect to the measure of the rates from and between the territories of origin in these cases one of the most important points to be determined is whether the rates on horses and mules should bear some relationship to the rates on other forms of live stock, more particularly to the rates on fat cattle. The shippers and shipping organizations represented at the hearings are unanimously of the opinion that the rates on horses and mules should be related to the rates on cattle, preferably 115 per cent, citing in support of their position the previous decisions of this commission in the Dimmitt-Caudle-Smith case and the South Dakota and Nebraska Live Stock cases, supra. They argue that since the Hoch-Smith Resolution made no distinction between the different kinds of "live stock" in its direction to this commission to give favorable consideration to the rates on the "products of agriculture * * * including live stock" no warrant exists for the distinction contained in the notice of hearings entered in Part 9 of Docket No. 17000 in connection with the rates on live stock in the western district whereby those hearings were confined to edible live stock. Furthermore, they contend that as horses and mules are raised mostly in the cattle producing states and are transported in the same manner and under the same conditions as cattle no other commodity is more comparable. Of the exhibits introduced by the shippers in support of their contention, perhaps the most illustrative were those prepared by the Board of Rail-

road Commissioners of South Dakota. In Appendix 22 there is set forth the average earnings per ton and per ton-mile computed on the average hauls during 1924 of horses, cattle and hogs over the Chicago & North Western, the Chicago, Milwaukee & St. Paul, the Chicago, Burlington & Quincy and 59 western railroads. These [fol. 1456] earnings are compared with similar earnings returned by the products of agriculture, animals and their products, products of mines, products of forests, and manufacturing and miscellaneous articles shipped over the same railroads; and are based on Wettling's exhibits Nos. 34 and 43 introduced on behalf of the western trunk line carriers in Ex Parte 87, Revenues in Western District, 113 I. C. C. 3, excerpts from which were admitted in evidence in the present cases by consent of the parties. These comparisons show that the average earnings on horses, per ton and per ton-mile, on the 59 western railroads were $5.51 and 2.436 cents, respectively, for an average haul of 226.18 miles. On cattle the earnings were $4.61 per ton and 1.852 cents per ton-mile for an average haul of 248.95 miles; and on hogs the earnings were $5.73 per ton and 1.415 cents per ton-mile for an average haul of 404.92 miles. The earnings on products of agriculture, animals and their products, products of the mines, products of the forests, and manufacturing and miscellaneous commodities ranged from $1.16 per ton on products of the mines to $5.45 per ton on animals and their products, while the ton-mile earnings ranged from .802 cents in the case of products of the forests to 1.958 cents on animals and their products. From these comparisons it will be observed that the average return, per ton and per ton-mile, to the 59 western railroads on horses and mules was, with the single exception of the per ton return on hogs, in excess of the average return on other commodities transported.

In the following table, taken from an exhibit introduced by the Board of Railroad Commissioners of South Dakota, the earnings per car and per car-mile on 148 actual shipments of horses and mules made during the year 1918 from South Dakota origins are compared with the earnings returned on similar shipments of cattle between the same points, computed on the present rates and the average loadings for horses and mules of 11.68 tons and for cattle of 11.57 tons for 59 western railroads.

[fol. 1457]

Statement Showing Rates, Hauls & Earnings on Actual Shipments of Horses Made in 1918 [illegible] South Dakota Origins to Adjacent States as Compared With Shipments of Cattle From and To the Same Points

From	To	Horses					Cattle		
					Earnings			Earnings	
		Miles	Cars	Rate	Car	Car mile	Rate	Car	Car mile
Centerville, S. D.	Sioux City, Ia.	71	12	19 5c	$45 55	64 2	17c	39 34	55 4
Huron	Sioux City, Ia.	187	18	32	74 75	40	28	64 79	34 6
Highmore	Sioux City, Ia.	250	10	34 5	80 59	32 2	30	69 62	27 8
Redfield	Council Bluffs	326	6	38 5	89 94	27 6	33 5	77 52	23 8
Huron	Council Bluffs	284	7	37	86 43	30 4	32	74 05	26 1
Miller	Deerfield, Wis.	573	3	52 5	122 64	21 4	45 5	106 29	18 4
Highmore	South Omaha, Nebr.	356	3	38 5	89 94	25 3	33 5	77 52	21 8
Belle Fourche	South Omaha, Nebr.	602	30	54	126 14	21	47	108 76	18 1
Rapid City	South Omaha, Nebr.	548	6	50 5	117 97	21 5	44	101 82	18 6
Winner	South Omaha, Nebr.	293	26	41	96 77	32 7	35 5	82 15	28
Parker	Chicago, Ill.	562	11	47	109 79	19 5	41	94 87	16 9
Miller	Chicago, Ill.	698	16	52 5	122 64	17 5	45 5	106 29	15 1

1029

[fol. 1458] The evidence relied upon by the carriers in opposition to the request of the shippers that the rates on horses and mules be related to the rates to be prescribed by this commission for the western district in Part 9 of Docket No. 17000 is practically the same as advanced by them in support of their contention that the rates on cattle and other kinds of livestock are too low. Thus, as shown by previous exhibits in this report, they compare the rates on horses and mules with the rates on various commodities which have no characteristics in common with horses and mules, but which for the most part load heavily.

Various cost studies introduced by the carriers indicate the unusual expenses they incur in the transportation of livestock. Among these might be mentioned a cost study made by the Santa Fe which shows that the average cost of a four-pen yard approximates $2,200, exclusive of the site; and that the maintenance cost per pen for that carrier for the year 1927 was $29.18. Special tracks have to be constructed to these yards and extraordinary facilities afforded for feeding, watering, and resting livestock under the requirements of the Federal 28-hour law, 34 Stat. 607. Additional expenses are incurred in unloading and reloading livestock to comply with the aforementioned law and with state and Federal quarantine regulations. Yards also must be maintained for cleaning stock cars, and removing old bedding and rebedding the cars. A yard maintained for this purpose by the Santa Fe at Morris, Kans., costs $152,596.39. The expense of moving stock cars from the Kansas City yards to the Morris yards and return is placed at 53 cents per car, while the average cost of cleaning the cars is stated to be $1.105 per car. The cost of this bedding, which averages about 3 tons per car, is placed by the carriers at 2½ to 8 times the amount of the tariff charge for this service. In addition, free transportation is afforded to caretakers, and additional risks and liabilities incurred in their transportation. The carriers show further that the [fol. 1459] animals must be moved under expedited service; that in the course of transportation they require constant attention, and must be carefully handled to prevent injuries. Furthermore, they point out that the percentage of empty to loaded car movement, amounting to 83.12 per cent as shown by a traffic study conducted on 35 western railroads during the month of October, 1926, increases

greatly the operating costs of the carriers in the transportation of livestock.

However, none of the expenses outlined above are chargeable solely to the transportation of horses and mules. They are incurred in the transportation of all livestock. Therefore, in the opinion of the examiner, such evidence does not justify the singling out of horses and mules from other forms of ordinary livestock for the application of rates which are unrelated to other livestock rates, particularly in view of the fact that the rates on all other kinds of ordinary livestock are constructed on a percentage relationship to the cattle rates. Indeed, the only differences worthy of mention from a transportation standpoint between horses and mules and other forms of ordinary livestock are (a) a higher claim percentage for loss and damage and (b) a higher per car valuation. An estimate made by a witness for the carriers in 1925 gave a valuation of $3600 for a carload of mules as compared with $2100 for a carload of steers—the value of the mules being placed at $150 per mule and the steers at $72 per steer. The average percentage of loss and damage claims for the years 1920 to 1927, inclusive, on horses and mules transported by the Southern Pacific amounted to 4.41 per cent of the revenue received on these animals while for other forms of livestock it amounted to only 1.59 per cent. Included, however, in this computation there appears an unusually high percentage loss of 12.16 per cent on horses and mules for the year 1921. The next highest year shown was for 1920 when the percentage of loss on these animals was 5.77 per cent. On the other hand, the years 1922 and 1923 show the claims [fol. 1460] on horses and mules amounted to only 1.72 per cent and 1.42 per cent, respectively, of the revenues. Similar computations made by the Rock Island indicate that the loss and damage payments of that carrier for the years 1924 to 1927, inclusive average 6.26 per cent of the revenue on horses and mules, while for other forms of livestock the claim payments averaged 2.54 per cent; on the Santa Fe the claim payments on horses and mules amounted to 3.30 per cent for the year 1926 and 3.31 per cent for the year 1927 as compared with 1.67 and 1.66 per cent, respectively, on other kinds of livestock. The shippers concede that horses

and mules are more subject to injury than cattle, but they point out they are not seeking the same level of rates as may be found reasonable for cattle. Furthermore, they argue the revenue per car to the carriers on horses and mules averages higher than on cattle because of higher rates and minimum weights. These factors the shippers contend outweigh the adverse factor of higher loss and damage claims.

It is the conclusion of the examiner that the rates on horses and mules from the territories of origin comprised in these cases should be related to the rates on fat cattle. Horses and mules are produced on the farms and ranges of the West under substantially the same conditions as cattle, and they are transported in the same manner. Wherein then is there any warrant for prescribing rates on horses and mules without regard to the rates on cattle, when the rates on hogs, sheep, and other forms of livestock are based on the fat cattle rates. To differentiate between horses and mules and other kinds of livestock on the ground of "non-edible" and "edible" finds no sanction in the language of the Hoch-Smith resolution; while the assertion that cattle, hogs, and sheep are subjected to severer competitive conditions than horses and mules has not been established. Possibly it is true that a low level of rates on cattle is necessary to move these animals to the primary markets, and [fol. 1461] that competitive conditions have affected these rates. But it should be observed that the cities which are the primary markets for cattle, sheep and hogs are also the primary markets for the distribution of horses and mules. It would seem, therefore, that the competitive conditions which affect the rates on cattle consigned to these markets likewise must be considered in prescribing the rates on horses and mules. Moreover, it can be said without fear of contradiction that if the horse and mule industry is to continue as an industry the rates must be low enough to permit of the movement of these animals from the ranges and western farms to the large markets located at the Missouri River cities of Kansas City, St. Joseph, and Omaha, and to other primary markets, such as Fort Worth, East St. Louis, and Chicago, where the animals may be resold for final distribution by local dealers in the East and South.

The Scales Compared

In Appendix 23 the present scales applicable on horses and mules in the territories covered by the complaints in these cases, and the various proposed scales suggested by the shippers and carriers for application throughout the Southwest and western trunk line territories, are compared with scales representing 115 per cent and 125 per cent, respectively, of the fat cattle scale proposed by the examiners in Docket No. 17000, Part 9, Livestock, Western District Rates for application throughout western trunk line and southwestern territories, including Texas differential territory. The examiners in that report propose that the 115 per cent scale should be applied to calves and hogs, in single-deck cars, and that the 125 per cent scale should be applied to sheep and goats, in single-deck cars.

The comparisons of the various scales set forth in Appendix 23 indicate that the proposed 115 per cent scale is [fol. 1462] lower than the Southwestern Horse and Mule Scale, the differences amounting to a reduction of 13.4 per cent in the rates at 500 miles and to 8.3 per cent in the rates at 1,000 miles. Compared with the eastern South Dakota scale it would result in increases commencing at 300 miles; these increases amounting to 9 per cent in the rates for 500 miles and to 12.6 per cent in the rates for 1,000 miles. Comparison of the 115 per cent scale with those proposed by the Wichita Chamber of Commerce shows that the 115 per cent scale is substantially the same as the joint line scale proposed by that body for application throughout the Southwest. It is lower than the Kansas City Chamber of Commerce Scale A, which that body proposes for application throughout Southwestern territory, but under 700 miles it is higher than the scale proposed by that body for application between and from Kansas and southern Missouri to the Southeast. As compared with the southern Nebraska single-line scale it will produce increases below 500 miles. The 115 per cent scale also is much higher than the proposed District 1 scale of the Board of Railroad Commissioners of South Dakota. As the suggested scales of the carriers would produce very material increases over the present rates in both southwestern and western trunk line territories, it follows naturally that the 115 per cent scale, and for that matter the 125 per cent scale, proposed by the

examiners in Part 9 of Docket 17000 are very much lower than the carriers' suggested scales.

On the whole, it may be said that should the commission approve the 115 per cent scale for application throughout the Southwest and that part of western trunk line territory covered by the complaints in these cases it will result in reduction in the present rates on horses and mules from and between points in the Southwest and produce corresponding increases in the rates from and between the western trunk line states. This will result in a more equitable adjustment in the rates in these territories; for the present [fol. 1463] Southwestern Horse and Mule Scale is unreasonably high as compared with the scales now in effect from western trunk-line states. Because of the higher scale applying in the Southwest the dealers in that section are at an undue disadvantage in meeting the competition of dealers located north of the Oklahoma-Arkansas state boundaries both on inbound shipments to the livestock markets and on the outbound shipments to ultimate destinations in the southern states."

Intrastate Rates

None of the complaints comprised in these proceedings directly bring in issue the intrastate rates. In the Nebraska Livestock Case, supra, the investigation was limited to a consideration of the intrastate rates from Nebraska origins to Omaha and South Omaha in their relationship to the interstate rates from the same origins to Kansas City, St. Joseph, and Sioux City. A joint hearing in the present proceeding was had only with the Public Service Commission of Kansas. To make the specific finding that the intrastate rates in Kansas are unduly prejudicial to interstate commerce without a like finding with respect to the intrastate rates in other southwestern and western trunk-line states would place a hardship upon the Kansas intrastate shippers which could be avoided by the simultaneous action of the carriers in initiating the same measure of rates for intrastate application in the several states which may be affected by the rates prescribed under the findings of this commission in these cases.

[fol. 1464] Accordingly, no specific finding will be recommended with respect to the intrastate rates; but the evidence

in these hearings convinces the examiner that the continuation of intrastate rates at levels below those hereinafter recommended for like distances for interstate application to, from and between the states covered by this proceeding will place an undue burden upon interstate commerce.

Fourth Section Applications

There was reassigned for further hearing portions of fourth section applications Nos. 461, 462, 621, 673, and 678. These applications were heard in connection with the previous hearing in No. 12358, and cases consolidated therewith. No evidence was submitted at that hearing and fourth section relief was denied, except that the carriers were authorized to establish and maintain over all routes between Fort Worth, Wichita, Kansas City, St. Joseph, St. Louis and Oklahoma City, on the one hand, and points in southwestern territory, as described in the appendix to the report in 93 I. C. C. 479 (and redescribed in the footnotes on page 6 of the present report), the lowest rates prescribed or approved in the said report as maximum over any route between the said points, and to maintaining higher rates from, to, and between intermediate points, subject to the limitations that the rates from, to, and between the said intermediate points did not exceed the scale of rates prescribed in the report as maximum rates for application at such intermediate points and that they did not exceed the lowest combination.

Upon further hearing herein, no evidence was offered by the carriers in support of their applications. They state that application No. 461 has been covered by fourth section order No. 9129; that application No. 462 was withdrawn; that applications Nos. 621, 673, and 678 have been covered by fourth section orders Nos. 9059, 9183, and 9711. They [fol. 1465] ask that if this commission authorize the scales as proposed by them that they be given fourth section relief similar to that granted in the Consolidated Southwestern Cases, supra. Specifically, the Missouri-Kansas & Texas seeks relief at intermediate points on that part of its line which extends north of the junction with the Chicago, Rock Island & Pacific at Windsor, Mo., to Booneville, Mo., and thence east to St. Louis.

In the Consolidated Southwestern Cases, supra, various fourth section applications assigned for hearing in connection therewith were denied, but the carriers were authorized to file applications within 90 days after service of the report for such relief as they might desire from the long-and-short-haul provision of the fourth section. It is recommended that a similar procedure should be followed in the present cases.

Groupings

The Chambers of Commerce of Kansas City and St. Joseph request that these two cities be grouped as formerly, and that the rates thereto and therefrom be based on the average of the distances to or from these points. It is recommended that this request be granted except for short hauls.

In their proposed report in Docket No. 17000, Part 9, Live Stock, Western District Rates, the examiners propose that this commission should grant the carriers permission to establish rate groups, subject to the limitation that the size of such group shall not exceed 10 per cent of the distance from the nearest point in the group, if it be an origin group, or to the nearest point in the group if it be a destination group; the distance to be measured over the shortest route over which carload traffic can be moved without transfer of lading; and to be measured from, to, or between public livestock markets, if such markets are located within the group or groups. The rates to or from the [fol. 1466] groups are to be determined by the average distances within the group except where one or more of the points in the group is a public live stock market, in which instance, the distance to or from that market would be used to determine the rate. In certain specific instances definite mileages are recommended, while in others it is recommended that 20 per cent of the short line distance should be allowed in determining the size of the group instead of 10 per cent. The latter recommendation is made with respect to group rates to Kansas City and St. Joseph, and with respect to the rates from Colorado common points to the Missouri River markets. Similar recommendations as outlined above are made herein with respect to the rates on horses and mules.

Conclusions

The examiner recommends that this commission should modify its previous findings and orders in these cases in the following particulars:

(1) That the scale of rates set forth in Appendix 24 to this report should be found reasonable and prescribed for future application to the transportation of horses and mules, in carloads, between points in the territory described in the appendix published on page 498 of the report in Docket No. 12358, Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 479, (and redescribed in the footnote on page 6 of this report,) in lieu of the single and joint line scales of rates found reasonable as maximum rates and prescribed in the last cited report; and that the order in the last cited report should be amended accordingly.

2. That the scale of rates set forth in Appendix 24 to this report should be found reasonable and prescribed for future application to the transportation of horses and mules, in carloads, between Fort Worth, Tex., Oklahoma City, Okla., Wichita, Kans., Kansas City, Kans.-Mo., St. [fol. 1467] Joseph and St. Louis, Mo., on the one hand, and points in New Mexico and Texas differential territory as described in the report in Investigation and Suspension Docket No. 2389, Rates on Horses and Mules in the Southwest, 102 I. C. C. 87, on the other hand; and that the order entered in the last entitled report prescribing the scale of differentials set forth in Appendix C to said report for application within Texas differential territory and New Mexico, and fourth section order No. 9183 attached to said report, should be vacated and set aside.

(3) That the finding of this commission in Docket No. 13273, Nebraska Livestock Case, 89 I. C. C. 444, approving rates for the transportation of horses and mules, in carloads, constructed 115 per cent of the single-line scales of rates approved for application on cattle (which scales are set forth in the appendix to the said report), and joint rates 4 cents over the single-line rates for distances of 500 miles and less, from stations in Nebraska to the Missouri River markets, Sioux City to Kansas City, inclusive, should be modified to find that for the future the maximum rates on horses and mules, in carloads, from Nebraska origins to

the Missouri River markets, Sioux City to Kansas City, inclusive, should be the rates for the distances shown in the scale of rates set forth in Appendix 24 to this report; and that it will be unduly preferential of intrastate shippers and of Omaha and South Omaha to the undue prejudice of interstate shippers and the markets of Kansas City, St. Joseph, and Sioux City to maintain lower intrastate rates from Nebraska origins to Omaha and South Omaha than those contemporaneously published for like distances on interstate shipments from the same origins to Kansas City, St. Joseph, and Sioux City.

(4) That the scale of rates set forth in Appendix 24 to this report should be found reasonable and prescribed for future application to the transportation of horses and mules in carloads, from points in South Dakota to markets [illegible] in the states of Minnesota, Wisconsin, Illinois, Iowa, Missouri, and Nebraska, in lieu of the rates found reasonable and prescribed on horses and mules, in carloads, in Docket No. 12268, South Dakota R. R. Commissioners v. C. & N. W. Ry. Co., 77 I. C. C. 451; and that the order in the last cited report should be amended accordingly.

(5) That the scale of rates set forth in Appendix 24 for the transportation of horses and mules, in carloads, should be approved by this commission for general application throughout western trunk line territory and between points in that territory and southwestern territory.

(6) That in constructing the rates on horses and mules, in carloads, to east bank Mississippi River crossings, Memphis and south thereof, an arbitrary of 2 cents in the case of Memphis and 2.5 cents in the case of other east bank crossings below Memphis should be added to the rate to or from the nearest west bank point.

[fol. 1572] No. 12358 et al. — BRO:AG:

Interstate Commerce Commission,

Washington

January 7, 1930.

No. 12358*

TEXAS LIVE STOCK SHIPPERS PROTECTIVE LEAGUE et al.

v.

DIRECTOR GENERAL, AS AGENT ABILENE & SOUTHERN RAILWAY COMPANY, et al.

NOTICE OF HEARING

The above entitled cases are assigned for oral argument February 17, 1930, ten o'clock a.m., standard time at the office of the Interstate Commerce Commission, Washington, D. C., before the Commission:

By the Commission.

George B. McGinty, Secretary.

Note: This argument begins at 10:00 A. M.

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*This notice also embraces No. 11018, Wichita Board of Commerce et al. v. Dir. Gen., as Agt. Alex. & Wn. Ry. Co. et al.; No. 13001, Chamber of Commerce of K. C., Mo. v. Alex. & Wn. Ry. Co. et al.; No. 13619, Ross Bro. Horse & Mule Co. et al. vs. U. P. R. R. Co. et al.; No. 13627, Burnett-Yount Horse & Mule Co. et al. v. Abilene & Southern Ry. Co. et al., I. & S. No. 2389, Rates on Horses and Mules to, from, or between Southwestern Points; I. & S. No. 1484, Horses and Mules from Kansas City, Mo., and Wichita, Kansas, to New Orleans, La., Memphis, Tenn., and Other Points; No. 13273, Nebraska Live Stock Case; No. 12268, Board of R. R. Commr's of the State of S. D. vs. C. & N. Wn. R. R. Co. et al., and F. S. Apps. Nos. 461, 462, 621, 673 and 678.

[fols. 1573-1682] Interstate Commerce Commission

Western Horse and Mule Rates

No. 12358

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al.

v.

DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY et al.

No. 11018

WICHITA BOARD OF COMMERCE et al.

v.

DIRECTOR GENERAL, AS AGENT, ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

No. 13001

CHAMBER OF COMMERCE OF KANSAS CITY, MO.,

v.

ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

No. 13619

ROSS BROTHERS HORSE & MULE COMPANY et al.

v.

UNION PACIFIC RAILROAD COMPANY et al.

No. 13627

BURNETT-YOUNT HORSE & MULE COMPANY et al.

v.

ABILENE & SOUTHERN RAILWAY COMPANY et al.

Investigation and Suspension Docket No. 2389

Rates on Horses and Mules, To, From, or Between Southwestern Points

Investigation and Suspension Docket No. 1483

Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and Other Points.

No. 13273

NEBRASKA LIVESTOCK CASE

No. 12268

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF SOUTH DAKOTA

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY et al.

Portions of Fourth-Section Applications Nos. 461, 462, 621, 673, 678

ORDER—Feb. 1, 1932

Upon further consideration of the record in the above-entitled proceedings, and good cause appearing therefor:

It is ordered that these proceedings be, and they are hereby, reopened for further hearing in all respects, at such time and place as the Commission may hereafter direct, for the purpose of supplementing the record already made.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fols. 1683 & 1684] EXHIBIT "WW"

H. W. H.

[fol. 1685] SUPPLEMENTAL FOURTH-SECTION ORDER

No. 11340

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 6th day of January, A. D. 1934.

Western Horse and Mule Rates

Upon further consideration of the matters and things involved in fourth-section applications Nos. 461, 462, 621, 673, and 678, and upon consideration of a petition dated December 18, 1933, by F. A. Leland, Agent, for postponement of the effective dates in fourth-section order No.

11340, entered in those applications, good cause having been shown:

It is ordered that fourth section order No. 11340, entered July 24, 1933, in applications Nos. 461, 462, 621, 673, and 678, be, and the same is hereby, modified and amended by postponing the vacating and denial dates therein from February 5, 1934, to March 8, 1934.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1686] Second Supplemental Fourth Section Order No. 11340

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 5th day of February, A. D. 1934.

Western Horse and Mule Rates

Upon further consideration of the matters and things involved in fourth section applications Nos. 461, 462, 621, 673, 678, 13253 and fourth section order No. 9183 entered in Rates on Horses and Mules in the Southwest, 102 I. C. C. 67, and upon consideration of Agent E. B. Boyd's petition of January 19, 1934, for postponement of the orders in Dockets Nos. 12358 and 24486, Western Horse and Mule Rates, 195 I. C. C. 417, good cause having been shown:

It is ordered that fourth section order No. 11340, entered July 24, 1933, in applications Nos. 461, 462, 621, 673, 678, and 13253 and in Rates on Horses and Mules in the Southwest, 102 I. C. C. 67 as amended by supplemental order of January 6, 1934, be, and the same is hereby, further modified and amended by postponing the vacating and denial dates therein from March 8, 1934, to April 17, 1934.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1687] Third Supplemental Fourth Section Order No. 11340

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 13th day of March, A. D. 1934.

Western Horse and Mule Rates

Upon further consideration of the matters and things involved in fourth section applications Nos. 461, 462, 621, 673, 678, and 13253, also fourth section order No. 9183 entered in Rates on Horses and Mules in the Southwest, 102 I. C. C. 67, and upon consideration of the request of District Judge Albert L. Reeves, of the United States District Court for the Western District of Missouri, for further postponement of the effective date of fourth section order No. 11340, entered in those applications, good cause having been shown:

It is ordered that fourth section order No. 11340, entered July 24, 1933, in applications Nos. 461, 462, 621, 673, 678, and 13253, and in Rates on Horses and Mules in the Southwest, supra, as amended by supplemental orders entered therein from time to time, be, and the same is hereby, further modified and amended by postponing the vacating and denial dates therein from April 17, 1934, to May 17, 1934.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1688] Exhibit "XX"

H. W. H.

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Petition of Southwestern Carriers for Reconsideration and Modification of Commission's Findings, etc., filed November 8, 1933,

Reply of Complainant, The Board of Railroad Commissioners of the State of South Dakota, filed November 20, 1933,

Answer of The Chamber of Commerce of Kansas City, Missouri, filed November 23, 1933,

Order of the Commission entered December 11, 1933,

Motion to delete, of defendants, filed December 26, 1933,

Order of the Commission entered February 5, 1934, and

Order of the Commission entered March 12, 1934,

in Dockets Nos. 12358, Texas Livestock Shippers Protective League et al. v. Director General, as Agent, Abilene & Southern Railway Company, et al.; Investigation and Suspension Docket 2389, Rates on Horses and Mules to, from, or between Southwestern Points; 11018, Wichita Board of Commerce et al. v. Director General, as Agent, Alexandria & Western Railway Company, et al.; 12268, Board of Railroad Commissioners of State of South Dakota v. Chicago & North Western Railway Company et al.; 13001, Chamber of Commerce of Kansas City, Mo. v. Alexandria & Western Railway Company, et al.; 13273, Nebraska Live Stock Case; 13619, Ross Brothers Horse & Mule Company et al. v. Union Pacific Railway Company et al.; and 13627, Burnett-Yount Horse & Mule Company et al. v. Abilene & Southern Railway Company et al., the originals of which are now on file and of record in the office of this Commission.

I further certify that copies of said orders of December 11, 1933, were served upon the Washington representatives of the defendants and on all other parties on December 27, 1933.

I further certify that no order was entered upon motion to delete filed December 26, 1933.

[fol. 1689] In witness whereof I have hereunto set my hand and affixed the seal of said Commission this 17th day of March, A. D. 1934.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

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[fol. 1692] Before the Interstate Commerce Commission

Docket No. 12358 *

Texas Livestock Shippers Protective League et al., Complainants,

versus

Director General, as Agent, Abilene & Southern Railway Company et al., Defendants

Petition of Southwestern Carriers for Reconsideration and Modification of Commission's Findings and Conclusions in its Report on Further Hearing Herein of July 24, 1933, and for Further Hearing—Filed Nov. 8, 1933

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* Includes I. & S. No. 2389, Rates on Horses and Mules to, from, or between Southwestern Points; No. 13619, Ross Brothers Horse and Mule Co. et al. v. Union Pacific Ry. Co. et al.; and No. 13627, Burnett-Yount Horse and Mule Co. et al. v. Abilene & Southern Ry. Co. et al.; also, but only so far as relation is concerned, No. 11018, Wichita Board of Commerce et al. v. Director General, as Agent, Alexandria & Western Ry. Co. et al.; No. 13001, Chamber of Commerce of Kansas City, Mo., v. Alexandria & Western Ry. Co. et al.; No. 13273, Nebraska Livestock Case; and No. 12268, Board of Railroad Commissioners of State of South Dakota v. Chicago & North Western Ry. Co. et al.

To the Interstate Commerce Commission:

Come now the southwestern carriers, defendant in the above entitled complaint and in such of the complaints [fol. 1693] listed in the margin as relate to the rates on horses and mules to, from, or between points in the Southwest, and hereby petition the Commission to reconsider the findings and conclusions set out in its reports heretofore made therein and in particular those made in its report on further hearing of July 24, 1933, 195 I. C. C. 417, in so far as the rates on horses and mules to, from, or between points in the Southwest are concerned, and that upon such reconsideration the Commission rescind, set aside, and abrogate its findings and conclusions therein made in the particulars enumerated below. These defendants are concerned with the rates on horses and mules which the Commission may see fit to prescribe in territories other than the Southwest (to the extent they are brought in review in the complaints listed in the margin) only in so far as such extraterritorial rates may have a bearing or influence upon the rates in the Southwest from the standpoint of relationship, but not otherwise.

To some extent the foregoing petition is predicated upon facts not of record herein and upon changed conditions that have developed since the last hearing was held herein. Such additional evidence has been developed in more recent hearings held in other complaints or may be verified otherwise from the Commission's records, but if the Commission does not feel at liberty to take note thereof in its con- [fol. 1694] sideration of this petition these defendants additionally pray that the Commission reopen these proceedings for further hearing in order that such facts may be incorporated in the record herein.

Specifically, these defendants ask and most earnestly urge, for the reasons hereinafter to be expounded, if the Commission can not be prevailed upon to give the class A rates prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203, hereinafter referred to as the southwestern revision, a trial in respect of the traffic to which these proceedings relate, that it at least refrain from inflicting upon them the prospective reduction of their interstate rates on horses and mules contemplated by its said report on further hearing. By the searching test of years of experience, the 12358 rates prescribed by the Commission in its prior

order herein of November 10, 1924, as supplemented by its report and order in I. & S. No. 2389 of July 30, 1925, whereby arbitraries were authorized to be added as to shipments of horses and mules to, from, or between points in Texas differential territory, have been tried and not found wanting. Thus, it has been developed at hearings recently held by the Commission in other complaints dealing with the interterritorial combination rates on such traffic to points in the Southeast that generally there has been a free and unrestricted movement of the traffic on such [fol. 1695] rates as far as the Mississippi River crossings, even to the extent of virtually exhausting the stock of these animals that are available for sale in southwestern territory. This aspect of the case will be more fully developed in the ensuing discussion.

With respect to the statement on sheet 30 of the aforesaid report on further hearing that the Commission will consider the entry of appropriate orders should rates in accordance with its findings therein not be published within ninety days after the service of such report, it was anticipated that this petition would be filed well within this ninety-day period. However, other pressing demands upon the time of counsel to whom the task of preparing such petition have unexpectedly delayed the preparation thereof until now, but it is hoped that the Commission will delay the issuance of any orders in these proceedings until it has reviewed and fully considered the reasons set forth herein for not carrying its findings in question into effect.

In support of the foregoing petition, these defendants assign the following grounds of error as the basis for their aforesaid plea for a vacation of the findings and conclusions made by the Commission herein:

1. Approximately 18 months have elapsed since the last hearing in these proceedings was held. During that time [fol. 1696] both the demand for and the value of horses and mules have appreciated to a substantial degree, so that in these and in other particulars the findings of the Commission are not in accord with conditions now existing. For the most part, if not altogether, the data establishing the existence of these changed conditions are available in the files of the Commission, but, of course, without a further hearing, are technically not a part of the record herein.

2. In proposing to impose upon the southwestern carriers the drastic reduction of their rates on horses and mules that is contemplated by its report on further hearing, the Commission does not give effect to but is proceeding in contravention of the provisions of § 15a of the Interstate Commerce Act as amended by § 205 of the Emergency Railroad Transportation Act, 1933, amended paragraph (2) of § 15a reading as follows:

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide such service."

The prevailing rates on horses and mules in the Southwest have not served to curtail or restrict in the least the [fol. 1697] free and easy movement of the traffic, and in their present financial straights the carriers are in no position to absorb or bear any reduction of their rates except for the most urgent and imperative reasons.

3. In proposing to impose upon the southwestern carriers the contemplated drastic reduction of their rates on horses and mules, the Commission loses sight of its admonitory suggestion in Ex Parte 103, The Fifteen Per Cent Case, 1931, 178 I. C. C. 539, to the effect that the carriers should undertake a revision of their rates to the end that they might bring about an increase of their revenues where the situation might warrant. So far from permitting an increase of their rates, the Commission is here proceeding in precisely a contrary direction by compulsorily inflicting upon the southwestern carriers a reduction thereof that is wholly uncalled for by existing conditions. There is no suggestion of, nor can the carriers expect, an increase in the volume of movement consequent upon a reduction of the rates on this traffic.

4. The Commission's proposal to impose upon the southwestern carriers the drastic reduction of their rates on horses and mules contemplated as aforesaid is directly in conflict with its oft repeated holding that a prima facie

presumption of reasonableness attaches to rates long con-
[fol. 1698] tinued in effect, and that in order to overcome that presumption the evidence of unreasonableness must not only be clear and convincing, but must furnish a reasonable basis for determining to what extent, if any, the rates assailed are excessive. This is particularly true where, as here, the rates in effect were prescribed by the Commission. The evidence of record herein fails to measure up to this test.

5. In proposing to impose upon the southwestern carriers the contemplated drastic reduction of their rates on horses and mules, the Commission has failed to take into account the differences in the distribution of the transportation burden that exist in the Southwest in relation to other parts of the country, and of the dependence of the southwestern carriers for their earnings upon other classes of traffic than those which sustain the carriers elsewhere. No consideration is given to the fact that in the Southwest an extremely large proportion of the commodities transported by the carriers, notably, petroleum oil, edible livestock, and grain, moves at inordinately low rates by reason of the stress of competitive and economic conditions. (See Exhibits C-346 to C-350, Tr. 1861-68.)

6. In proposing to impose upon the southwestern carriers the contemplated drastic reduction of their rates on horses and mules, the Commission failed to mention and appar-
[fol. 1699] ently accorded no consideration to the fact that, after the death knell was sounded to the possibility of any award of reparation on shipments of horses and mules within the territory in issue in No. 12358 by the decision of the Supreme Court in Arizona Grocery Co. v. Railway Co., 284 U. S. 370, the complainants in that proceeding have manifested no further interest in the rates under review therein, either by attending the further hearing in May, 1932, or otherwise.

7. In its opinion in Dayton-Goose Creek Ry. Co. v. United States, 263 U. S. 456, 478, the Supreme Court declared that the policy of the Transportation Act, 1920, is to subject the railroad systems of the country more completely than ever to the fostering guardianship and control of this Commission, "which is * * * by fixing adequate rates for interstate commerce, * * * to secure a fair return upon the properties of the carriers engaged."

Despite this benign intent, during the prosperous era of the 20's no opportunity was afforded the southwestern carriers as a group to accumulate a reserve, or even to earn the fair rate of return to which they were legally entitled upon their property investment; and now, in the face of accumulating deficits and with a number of the carriers in receiverships or operating under trustees and yet many others failing by a wide margin to earn their fixed charges, [fol. 1700] largely attributable to loss of traffic to competing transportation agencies directly or indirectly subsidized and to rate reductions forced upon them in meeting such competition, the Commission by a series of recent decisions has further weakened the southwestern carriers by imposing upon them substantial reductions in the rates on other commodities not readily susceptible to other than rail transportation in the Southwest, such as coal, bananas, and various commodities which moved freely and without hindrance on the rates condemned by the Commission. To this growing list of commodities upon which the rates have been so reduced the Commission now proposes to add the horse and mule traffic in the Southwest. A rate that is reasonable under normal conditions does not become unreasonable merely because other rates have been reduced to meet newly arisen competitive conditions or because of the drive of economic necessity.

8. The Commission erred in rejecting the proposal of these defendants to apply the reduced class A rates prescribed in the southwestern revision (not the much higher class A rates that in a large measure applied in 1924 upon shipments of horses and mules in the Southwest at the time the Commission's initial report in No. 12358 was handed down) in lieu of the going rates on horses and mules between points in the Southwest as measured by the 12358 [fol. 1701] scale prescribed by the Commission some nine years since, or at least a scale of rates more remunerative than the rates therein prescribed. The southwestern lines, however, have never abandoned the 13535 class A rates as the basis advocated by them for future application.

9. The Commission further erred in failing to hold and declare that for the past eight years or more the horse and mule traffic in the Southwest has moved freely and at times in increasing volume under the rates prescribed in its ini-

tial report herein of November 10, 1924, and still continues to move, so far as the available supply permits, and that the rates thus prescribed are not unreasonable or otherwise unlawful.

10. So far as such finding has reference to southwestern territory, the Commission's finding in its report on further hearing that maximum reasonable rates for the transportation of horses, mules, burros, and asses between points in the territory to which such report relates will be 115 per cent of the rates on beef cattle from and to the same points prescribed in Livestock—Western District Rates, subject to a minimum of 23,000 pounds, and that rates in excess thereof are and for the future will be unreasonable, is not supported by but is contrary to the facts established of record herein, and is likewise controverted by facts more recently developed in other complaints relating to the inter-
[fol. 1702] territorial rates on horses and mules to points in the Southeast.

11. The conclusion expressed by the Commission that the scale of maximum reasonable rates referred to in the next preceding paragraph should apply uniformly throughout the territory covered by these consolidated cases in like manner as was held with respect to the rates on edible livestock prescribed in Livestock—Western District Rates, supra, does violence to the facts established of record herein, in that it ignores altogether the radically more favorable economic and commercial conditions under which horses and mules, as contrasted with edible livestock, are produced, marketed, and used, and even fails to take into account many of the differences in transportation conditions incident to these two classes of traffic.

In its order of May 16, 1927, in No. 17000, Part 9, whereby the Commission inaugurated its investigation pursuant to the directions of the so-called Hoch-Smith Resolution of the rates on edible livestock in the western district, the distinction between these two classes of livestock was recognized in that by the terms of such order the scope of the proceeding was restricted to the rates on edible livestock. Certainly, there is no market competition in the sale of edible livestock in relation to horses and mules. (Even where the latter are shipped for slaughter special rates are ordinarily provided.)

[fol. 1703] 12. The conclusion expressed by the Commission that it is illogical to prescribe rates on horses and mules unrelated to the rates on cattle, when the rates on hogs, sheep, and all other ordinary forms of livestock are based on the beef cattle rates, ignores the essential underlying fact that cattle and other kinds of edible livestock are produced, transported, marketed and used for cognate purposes which are altogether unlike and unrelated to those which influence and control the production, transportation, marketing and use of horses and mules. This conclusion of the Commission likewise gives no weight or credence whatsoever to the radical differences in the economic conditions to which these two classes of traffic are respectively subjected. The distressing economic conditions which unquestionably were responsible for the undeniably low level of the rates prescribed on edible livestock in Livestock — Western District Rates, supra, have no counterpart so far as horses and mules are concerned.

13. The conclusion expressed by the Commission in its report on further hearing herein that the only substantial transportation disadvantages of horses and mules as compared with other forms of ordinary livestock are a higher percentage of claims for loss and damage and a higher per-car valuation is a woefully inadequate and incomplete recitation of such transportation disadvantages and is in con-[fol. 1704] flict with the facts established of record, and even in conflict with findings made within the four corners of such report on further hearing as well as with the considered findings of the Commission elsewhere made. Attention is particularly directed to the Commission's finding in its report on further hearing herein that the movement of horses and mules is not more than three to four per cent of the volume of the movement of edible livestock, as also to its recent finding in Livestock, Southern Territory Rates, 171 I.C.C. 721, at page 732, that it is well known that in other territories than the Southeast livestock frequently moves in trainload lots. Among other transportation conditions not alluded to in the foregoing conclusion of the Commission are the following:

(a) The movement of horses and mules is almost entirely in one direction, that is from the producing areas to the markets and the consuming points, whereas there is some

movement of cattle, particularly of stockers, in a westerly direction from the markets to the ranges (Tr. 1016-17). This condition tends to lessen the empty movement of stock cars as respects the transportation of edible livestock.

(b) The transportation and handling of horses and mules calls for the newest and best class of equipment, with high roofs which do not leak, and at unloading points for feed, [fol. 1705] water, and rest the best covered pens available must be used for horses and mules, especially during inclement weather to avoid sickness (Tr. 1308).

(c) The movement of horses and mules is not steady but is sporadic (Tr. 1772). As was developed at the recent hearings with respect to the interterritorial rates, the principal movement of horses and mules occurs during the Fall, when the carriers are burdened with the peak movement of traffic, particularly agricultural products.

14. The Commission's statement that the competitive conditions which affect the rates on cattle consigned to the primary markets must be considered in prescribing the rates on horses and mules is incorrect and is contradicted by the testimony of representatives of the shipping interests (Tr. 1045, 1050-51, 1069, 1074, 1556, 1591). Indeed, elsewhere in its report on further hearing the Commission remarks that from the Southwest the flow of the traffic is mainly to the Southeast, whereas the principal markets for the horses and mules shipped from western trunk line territory are further to the north.

15. The conclusion expressed by the Commission in its report on further hearing herein that the same level of rates should apply on horses and mules in Texas differential territory as in the remainder of the Southwest and in [fol. 1706] western trunk-line territory wholly disregards the lighter traffic density, the more onerous transportation conditions and the consequent greater cost of the service that prevails in that territory than in Texas common-point territory and in the Southwest generally. Where it has taken differences in transportation conditions into account the Commission has almost uniformly prescribed or permitted higher rates to apply in Texas differential territory than in the Southwest generally, and it has only been in such instances that it has fixed rates upon other considerations than with regard to the transportation

standard, as in Livestock—Western District Rates, supra, that the Commission has failed to recognize in the measure of the rates the higher cost of operation that prevails in Texas differential territory.

16. Since the last hearing in these proceedings was concluded there has developed a strong trend toward the increased use of horses and mules on the farms, which has resulted in such an increased demand therefor as to create a scarcity in the supply available in the Southwest, this changed condition being at variance with the Commission's finding on sheet 7 of its report on further hearing that the use of horse and mule power on farms has decreased rapidly and steadily with the growth in the use of trucks and tractors. Even at the time of the last hearing this trend toward higher prices and an increased demand for horses [fol. 1707] and mules had begun (Tr. 1657), but it was not then nearly so pronounced as it is now.

17. Testimony that has been elicited on cross-examination of witnesses for the complainants at recent hearings in cases involving the rates on horses and mules from the Southwest to destinations in the Southeast, particularly Nos. 25767 and 25627 and complaints consolidated therewith, discloses that within the past year or so there has been a marked increase in the value of such animals, in consequence of which the depreciation in value commented upon in the Commission's report on further hearing has been to a large extent wiped out, if not altogether so.

18. The Commission's statement on sheet 8 of its report on further hearing that only the better grades of horses find their way to the stock markets is contrary to the evidence of record herein, since from the testimony of dealers at Atlanta, Ga., reproduced in Exhibit C-352, we find that the principal movement from the Southwest to the Southeast at this time is of the lighter animals, averaging not over 900 pounds in weight.

19. Since it was brought into being for the very purpose of analyzing and weighing the merits and demerits of the evidence presented for its consideration in passing upon the reasonableness vel non of freight rates brought before it for review in the exercise of its trained judgment as a [fol. 1708] body of experts informed by experience in

such matters, the Commission is not warranted in declining to recognize the probative value of the comparisons submitted by defendants of the assailed rates on horses and mules in the Southwest with the corresponding rates on other commodities handled by the carriers in that territory. It is the duty of the Commission to examine and analyze such evidence, making due allowance for all differences in traffic and transportation conditions or the like that may be called for in the light of its experience, and this duty it may not lightly evade by refusing to give appropriate consideration to such rate comparisons. (See Second Employers' Liability Cases, 223 U. S. 1, 58-59.)

20. While the point is doubtless of no practical significance in view of the present low ebb of the earnings of the carriers, as a matter of consistency these defendants feel impelled to question the Commission's statement on sheet 23 of its report on further hearing that the primary values it has placed upon the carriers under the provisions of § 19a constitute a higher grade of evidence than the estimates of value relied upon by the carriers. The Commission's valuation in a test case has failed to meet the approval of the Supreme Court of the United States.

[fol. 1709] Brief of Argument

Foreword

As outlined by the Commission on pages 481-82 of its initial report in these proceedings, 93 I. C. C. 479, at the time such report was handed down in 1924 there existed numerous uncorrelated rates and bases of rates that applied on shipments of horses and mules in southwestern territory. As there noted, to a considerable extent one or another of the prevailing class A rate scales applied on this traffic, and in Fies & Sons v. Railroad Co., 83 I. C. C. 421 decided in 1923, the Commission declined to condemn the assailed combination rates on horses and mules from North Little Rock, Ark., to Birmingham, Ala., composed of the then existent 9702 class A rate to Memphis and a commodity rate beyond. At the first hearing held herein, though, the carriers proposed as a basis of reasonable maximum rates for the future an average of the 9702 class B joint-line and single-line scales, and as a consequence the

Commission remarked at page 482 of its said report to the effect that no one seriously questioned that the class A rates were too high for future general application on this traffic.

This proposal of the carriers was rejected by the Commission at that time, and in lieu thereof the Commission prescribed as a basis of reasonable rates for the future, as [fol. 1710] recited on page 493, the column 12 scale of commodity rates prescribed in the 9702 case, the Memphis-Southwestern Investigation, 77 I. C. C. 473, with slight modifications, and the rates so prescribed, as noted in Rates on Horses and Mules in the Southwest, 102 I. C. C. 87, became effective on April 20, 1925, except that as to Texas differential territory the rates so published were suspended until September 17, 1925, at about which time the differential rates authorized by the Commission in the latter proceeding were put into effect. Also, to some extent somewhat lower proportionals were published from the market centers to certain river crossings.

These proceedings were thereafter reopened and further hearings were held at Kansas City in October, 1928, and in May, 1932, following which the Commission has now issued its report on further hearing. At these further hearings the southwestern carrier advocated as their proposal for future rates on horses and mules in lieu of their original suggestion the class A rates prescribed in the southwestern revision and which became effective on July 14, 1928. (*It is important to note that these* 13535 class A rates are not the much higher class A rates that prevailed in 1924 and to which the Commission referred as being unreasonably high for general application in its original report herein. The comment of the Commission [fol. 1711] upon these class A rates on sheet 12 of its mimeographed report on further hearing creates the inference that the class A rates previously said to be too high for future general application were the 13535 class A rates, and hence is misleading.)

While an actual comparison of the bare rates indicates that for the respective distances the 13535 class A rates are slightly higher than the 9702 class B rates originally proposed by these defendants, when consideration is given to the differences in the mileage formulæ upon which these two rate scales are or were applied it is improbable that

there is any material difference between the two. The rates prescribed in the southwestern revision are determined by use of the shortest distances by which carload traffic can move without change of lading, whereas the 9702 rates were determined by use of the so-called short three-line formula. Incidentally, we might add that the 13535 mileage formula is likewise used for determining the 17000-9 beef cattle rates, so that the reductions of the currently maintained 12358 rates that would result by the substitution therefor of 115 per cent of the 17000-9 western district beef cattle rates are even more substantial than appears simply from a comparison of the mileage rates in and of themselves.

[fol. 1712] None the less, as we have just indicated, again rejecting the rate proposal advocated by these defendants, disregarding the fact that for more than eight years the 12358 rates have not in the least stifled or impeded the free movement of the traffic, and ignoring entirely the fact that none of the southwestern complainants manifested sufficient interest in the proceeding to attend or be represented at the 1932 hearing. The Commission in its report on further hearing declares the going rates in the Southwest to be unreasonable and has called upon the southwestern carriers to apply to this horse and mule traffic a very materially lower scale.

On page 486 of its original report, the Commission gave heed to the plea of the southwestern carriers that their revenues not be depleted in making any readjustment of the rates on this traffic in that territory, but now, at a time when, as Field Marshal Haig said in the communique issued by him to the British army in the Spring of 1918, the carriers are fighting for their very existence with the deep blue sea behind them, figuratively speaking, they are threatened with a serious depletion of their earnings on this freely-moving, high-grade traffic, and for the sole reason, as nearly as they can divine, that in the unrelated western trunk-line territory this horse and mule traffic is accustomed to move on somewhat lower rates, and that [fol. 1713] the same scale of rates on edible livestock has been prescribed to apply in each of these two rate groups.

It is apropós, we believe, here to direct attention to the observation in the original report herein (page 488) that the rates for a haul of 1,000 miles on the 9702 class B rates

first proposed by these defendants would be 110.5 cents as compared with 108.5 cents in official territory from St. Louis to New York, a distance of 1,052 miles. Even the scale first prescribed by the Commission herein yielded the southwestern carriers only 78 cents for a haul of 1,000 miles, and under the findings in its report on further hearing the rate for 1,000 miles would be reduced to 71.5 cents, or less than two thirds of the St. Louis-New York rate in the generally lower-rated official territory. Why must the rates of the southwestern carriers be related to some lower rate adjustment elsewhere rather than dealt with in consideration of more remunerative rates that prevail in still other sections?

With this preliminary comment, we pass to a more particular discussion of the reasons hereinabove assigned in support of the plea of these defendants for a revocation of the Commission's finding that the rates on horses and mules in the Southwest are unreasonable and should be reduced to the level of 115 per cent of the beef cattle scale prescribed to apply in plains territory in Livestock—Western District Rates, supra.

[fol. 1714] Reduction of Southwestern Rates Neither Justified nor Required by Existing Conditions

Since these proceedings were submitted for the consideration of the Commission on August 1, 1932 (according *to the recitation* at the heading of its aforesaid report on further hearing), paragraph (2) of § 15a of the Interstate Commerce Act was amended so as to provide a different guide for the Commission to follow in ascertaining what are reasonable rates from that to which it was subject at the date of such submission, as well as when the further hearings were held prior thereto. By this amendment of § 15a the Commission was directed to give due consideration, in the exercise of its power to prescribe just and reasonable rates, (a) to the effect of rates on the movement of traffic, (b) to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing thereof, and (c) to the need of revenues sufficient to enable the carriers, under honest, economical, and efficienct management, to provide such service.

These defendants most respectfully insist that, in arriving at the conclusion expressed in its report on further hearing herein that the rates on horses and mules heretofore prescribed in No. 12358 are and will be unjust and unreasonable to the extent that they exceed 115 per cent [fol. 1715] of the No. 17000-9 plains territory beef cattle rates, has wholly failed to give effect to changes thus wrought by the Congress in the yardstick to be used by the Commission as the measure of just and reasonable rates. We say this for the reason that in none of the three particulars so laid down by the Congress in the foregoing amendment of the provisions of § 15a are the 12358 rates on horses and mules, subject to condemnation. The traffic has been moving and continues to move freely on those rates, the reduction thereof contemplated by the Commission will, under present conditions, not be conducive to the maintenance of adequate and efficient railway transportation service (which, if anything, has become more expeditious and efficient than ever before), and certainly the carriers are now more direly in need of maintaining the integrity of their existing rate structure wherever possible than perhaps at any time in their history.

Indeed, in its recent report in No. 26000, 195 I. C. C. 5, the Commission expressed the view on sheet 50 (mimeographed) that a general 10 per cent reduction in freight rates, absent a greater increase in traffic than appears to be in prospect, would so impair the credit of the carriers as to make it difficult, if not impossible, to obtain the funds which they will need to "carry on" with safe and efficient operation, and would force many additional carriers into [fol. 1716] receivership or reorganization, with consequent serious losses to investors in their securities, including numerous savings banks and life insurance companies.

While it is perhaps so obvious as to be trite, we feel impelled to add that a policy there declared to be unsound as a whole is likewise unsound when applied by piecemeal, at least in the absence of a positive showing that any given rate or rate adjustment is prohibitory of the free movement of the traffic. In other words, if it is not in the public interest for the Commission to require a general rate reduction of 10 per cent, and the Commission so found, then surely there can be no need or justification for any reduction of rates which do not in fact impede or hinder the easy flow of the

traffic, and that condition does not obtain with respect to the existing rates on horses and mules in the Southwest, as evidence recently presented to the Commission clearly demonstrates. In this connection, after referring to and reproducing on sheet 44 of its recent report (mimeographed) in No. 26000 the 1933 revision of paragraph (2) of § 15a, the Commission significantly remarked thus:

"Adequate and efficient railway transportation service is important not only to the public in general but to the shipper in particular."

[fol. 1717] And on sheet 52 of the same report we find the following:

"In the 1933 act the Congress points to the need, in the poblic interest, of adequate and efficient railway transportation service. But such service can not be maintained if the cream of the railroads' traffic is to be taken by competitors and if we require reductions on the traffic not subject to competition."

To the end that the Commission may be fully apprised of the substantial reductions of the rates on horses and mules in the Southwest that would result if the findings in its report on further hearing are made effective, we set out below a comparison of the 12358 scale prescribed in 93 I. C. C. 479 with rates made 15 per cent over the beef cattle rates prescribed in No. 17000, Part 9, to apply for corresponding distances in the Southwest. Along therewith we likewise show the percentage relation of the latter to the former, both single-line and joint-line. Because of the differences in the respective formulae for computing distances, these percentages do not reflect the full measure of the reductions that the 115 per cent scale would bring about, and for that reason appropriate allowance should be made for that dissimilarity in the application of the respective scales. The tabulation mentioned above follows:

[fol. 1718]

(Rates in Cents per 100 Pounds)

Distance (miles)	12358 scale		115 per cent of 17000-9 cattle scale	Per cent 115 per cent basis of present rates	
	Single line	Joint line		Single line	Joint line
5	14	17.5	12.5	89.3	71.4
10	14	17.5	12.5	89.3	71.4
15	14.5	18.5	14	96.6	75.7
20	15.5	19	14	90.3	73.7
25	16	20.5	15	93.8	73.2
30	17	20.5	15	88.2	73.2
35	17.5	21	16	91.4	76.2
40	18.5	22	16	86.5	72.7
45	19	23	17.5	92.1	76.1
50	20.5	24	17.5	85.4	72.9
55	21	25	18.5	88.1	74.0
60	21	25	18.5	88.1	74.0
65	23	26.5	19.5	84.8	73.6
70	23	26.5	19.5	84.8	73.6
75	24	27	20.5	85.4	75.9
80	24	27	20.5	85.4	75.9
85	24	27	22	91.7	81.5
90	24	27	22	91.7	81.5
95	24	27	23	95.8	85.2
100	24	27	23	95.8	85.2
105	24	27	24	100.0	88.9
110	25	28	24	96.0	85.7
115	26	29	24	92.3	82.8
120	26	29	25.5	98.1	87.9
125	27	30	25.5	94.4	85.0
130	28	31	25.5	91.1	82.3
135	28	31	26.5	94.6	85.5
140	29	32	26.5	91.4	82.8
145	30	33	26.5	88.3	80.3
150	30	33	27.5	91.7	83.3
160	31	34	27.5	88.7	80.9
170	32	35	29	90.6	82.9
175	33	36	29	87.9	80.6
180	33	36	30	90.9	83.3
190	34	37	30	88.2	81.1
200	35	38	31	88.6	81.6
205	36	38	31	86.1	81.6
210	36	38	32	88.9	84.2
220	37	39	32	86.5	82.1
230	38	40	33.5	88.2	83.8
240	39	41	33.5	85.9	81.7
250	39	41	34.5	88.5	84.1
260	40	42	34.5	86.3	82.1
280	42	44	35.5	84.5	80.7
300	44	46	37	84.1	80.4
320	46	48	38	82.6	79.2
340	47	49	39	83.0	79.6
[fol. 1719]					
360	49	49	40.5	82.7	82.7
380	49	50	41.5	84.7	83.0
400	50	51	42.5	85.0	83.3
420	52	53	43.5	83.7	82.1
425	52	53	45	86.5	84.9
440	53.5	54.5	45	84.1	82.6
450	53.5	54.5	46	86.0	84.4
460	55	56	46	83.6	82.1
475	55	56	47	85.5	83.9

(Rates in Cents per 100 Pounds)

Distance (miles)	12358 scale		115 per cent of 17000-9 cattle scale	Per cent 115 per cent basis of present rates	
	Single line	Joint line		Single line	Joint line
480	56	57	47	83.9	82.5
500	56	57	48.5	86.6	85.1
525	57.5	57.5	49.5	86.1	86.1
550	59	59	50.5	85.6	85.6
575	60	60	52	86.7	86.7
600	61.5	61.5	53	86.2	86.2
625	63	63	54	85.7	85.7
650	64	64	55	85.9	85.9
675	65	65	56.5	86.9	86.9
700	66	66	57.5	87.1	87.1
725	67	67	58.5	87.3	87.3
750	68	68	60	88.2	88.2
775	69	69	61	88.4	88.4
800	70	70	62	88.6	88.6
825	71	71	63.5	89.4	89.4
850	72	72	64.5	89.6	89.6
875	73	73	65.5	89.7	89.7
900	74	74	66.5	89.9	89.9
925	75	75	68	90.7	90.7
950	76	76	69	90.8	90.8
975	77	77	70	90.9	90.9
1000	78	78	71.5	91.7	91.7
Average	41.8	43.7	36.8	88.0	84.2

Per cent of reduction: Single-line, 12.0 per cent.
Joint-line, 15.8 per cent.

Apropos of the foregoing observations, as the direct result of enormous additional capital outlays that have been made by the carriers in the past few years, the individual shipper is now receiving more efficient and dependable, and hence more valuable, transportation service than ever be- [fol. 1720] fore, and by the same token the service rendered by the carriers on the 12358 rates is worth more to the shipper than it was at the time the rates were prescribed.

As indicative of this, it will be noted that in Livestock—Western District Rates, supra, the Commission remarked at page 68 to the effect that it was not the practice to haul livestock more than approximately 500 miles without unloading for feed, water, and rest, but at the present time it is not unusual for horses and mules to be hauled as much as 600 miles, and even 700 miles, within the 36-hour period fixed by the statute. An instance of this is found in the testimony of a witness in these proceedings (Tr. 1841) regarding a shipment of two cars of horses and mules moving from Los Angeles to Fort Smith, Ark. These cars were unloaded at El Paso for feed, water, and rest, and from there were handled to Fort Worth, a distance of 615 miles,

before again having to be unloaded. Also, at hearings recently held on complaints assailing the rates on horses and mules from the Southwest to destinations in southern territory (see, for illustration, pages 123-24 of the *of the* transcript in No. 25767, in which the hearing was held in July, 1933) it was pointed out that in the Southwest the train schedules are so arranged that shipments of horses and mules are moved as a rule to the market centers, such as Fort Worth, Oklahoma City, Kansas City and [fol. 1721] Memphis, without having to be unloaded enroute for feed, water and rest. Many of such hauls are for distances of 600 and 700 miles.

Reverting to the proposition that the Commission is now under the obligation to give due consideration to the effect of rates on the movement of the traffic, we find nowhere in its report on further hearing any suggestion that the existing rates on horses and mules in the Southwest have in any sense operated to stifle or discourage the movement of the traffic by rail, or to drive same to the trucks. Thus, on sheet 17 of its mimeographed report, mention is made of an increased movement of livestock, including horses and mules, by truck at South Omaha, but no such reference appears with regard to either Fort Worth or Oklahoma City. Furthermore, even the general reduction in the volume of receipts at the principal western stock markets during recent years that is noted on sheet 7 is attributed by the Commission to the growth that has taken place in the substituted use of trucks and tractors for horse and mule power, and of course since 1929 the prevailing economic depression has had its influence.

Aside from that, though, the figures exhibited by the Commission as to receipts at the stock markets do not truly reflect the annual volume of movement of this traffic by rail in the Southwest. Bearing in mind the fact that the 12358 rates became effective during the year 1925, it [fol. 1722] will be noted from Statements Nos. 27100 to 30100 issued by the Commission's Bureau of Statistics that from 1926 to 1929, the latter being the last year before the present economic depression made any serious dent in the volume of traffic handled by the carriers, there was what might be termed a general increase in the number of cars of horses and mules originated and handled by the car-

riers in the southwestern region, as will be seen from the following tabulation compiled from the statistical statements referred to above:

Horses and Mules—Southwestern Region

Year	Cars originated	Cars handled
1926	6,410	10,463
1927	8,220	12,670
1928	8,955	13,557
1929	8,847	13,556

Along with practically all other classes of traffic, of course, the volume of horses and mules handled by the carriers has suffered a decline since 1929, but we submit that the reason therefor may not property be ascribed to the rates. As a matter of fact, on sheet 6 of its report on further hearing herein the Commission remarks that from the Southwest the movement of the horse and mule traffic is mainly to the Southeast, and testimony given by the complainants in cases now before the Commission in which the rates on horses and mules to southeastern des- [fol. 1723] tinations are under review indicates that the dealers in the Southeast are looking more and more to the Southwest for their supply.

Thus, at the hearing had in No. 24674, J. W. Patterson Commission Company et al., complainants, held at Atlanta in December, 1931, one of the complainants, Mr. J. W. Patterson, testified (24674 Tr. 26) that it has been only in the last five years that "that stuff" has moved in volume from southwestern territory to his firm at Atlanta. (See Exhibit C-351 of record herein, reproducing extracts from the testimony in No. 24674.) And more recently, in July, 1933, one of the complainants who testified in No. 25767, R. H. Cargile et al., complainants, declared (25767 Tr. 56) to the effect that the available supply in the Southwest is becoming depleted, there now being a scarcity of horses and mules in Texas up to the usual standard. All these witnesses were agreed that there recently has developed a decided swing towards the increased use of horses and mules on the farm in place of tractors.

Except for shipments from the market centers, such as Fort Worth and Oklahoma City, and points related thereto, it should not be overlooked that horses and mules shipped from the Southwest to the Southeast move on combination

rates which are relatively higher than the rates in the Southwest proper. It therefore follows, in the light of the testimony of the southeastern dealers that there has [fol. 1724] been an increased volume of movement of this traffic from the Southwest on these combination rates, that the 12358 scale is not unreasonable and should not be condemned by the Commission.

So far as the complainants in the several southwestern cases are concerned, they have ceased to take an active interest in these proceedings since the decision of the Supreme Court was rendered in the so-called Arizona Grocery Company case, supra, on January 4, 1932. As a consequence of the holding made in that case, the Commission is precluded from making any award of reparation in favor of such complainants, and it seems apparent that when that hope vanished their interest in the rates on horses and mules forthwith went into eclipse. Neither they nor anyone representing them were present at or took any part in the further hearing that was held in these proceedings in May, 1932, although they had attended each of the prior hearings, from which the only logical deduction to be drawn, we believe, is that they are no longer sufficiently interested in the measure of the rates herein under review further to press their contentions with regard thereto. Indeed, witnesses who appeared for the complainants in the western trunk-line cases at that hearing (Tr. 1652, 1714) commented pointedly upon the absence of the southwestern shippers and expressed the view that their complaints should be dismissed.

[fol. 1725] In this connection, it is perhaps proper that we should direct attention to evidence of record to the effect that the competition between shipments of horses and mules from the Southwest and those from western trunk-line territory, South Dakota in particular, is rather limited (Tr. 1045, 1050-51, 1069, 1074, 1556, 1591, 1618-19, 1873-74). As previously noted, the Commission itself has remarked that the principal movement from the Southwest is into the Southeast, as well as that the principal movement of horses and mules from western trunk-line territory is to the northern and eastern markets.

It therefore follows that, if the Commission is of the view that conditions bearing upon the horse and mule rates in western trunk-line territory are such that they should not exceed more than 115 per cent of the corresponding beef

cattle rates in that section, the rates in the Southwest should not be made to feel the influence of such extraneous conditions. If competitive or other conditions in western trunk-line territory have exerted an influence which has held the rates on horses and mules there to a lower level than elsewhere, that affords no reason for extending that influence beyond western trunk-line territory so as to force down the rates normally prevailing elsewhere. The Commission has not seen fit to impose upon the carriers in trunk-line territory the low level of rates on petroleum oil that prevails in [fol. 1726] the Southwest, and by the same token the western trunk-line rates on horses and mules should not be made the measure of maximum reasonable rates thereon in the Southwest.

Carried to its logical conclusion, were that principle given universal application it would result in making the lowest rates to be found anywhere the yardstick by which to fix the measure of maximum reasonable rates throughout the country. Applied to the rates of the southwestern carriers, with perhaps close to half the tonnage handled by them moving on abnormally low rates, and to a large extent on rates lower than in any other section, it means that they will soon be "headed for the last round-up."

As the Commission recognizes in its report on further hearing, 115 per cent of the 17000-9 beef cattle rates will serve to increase to some extent the rates on horses and mules in western trunk-line territory, but will work a substantial reduction of the 12358 rates that have been in effect in the Southwest for more than eight years. Had consideration been given, though, to the long-standing rates on horses and mules in the normally lower-rated central territory the Commission could easily have justified itself in authorizing an increase of the 12358 rates. In order that the relation of the central territory rates on horses and mules to the 12358 rates may be the more readily appreci- [fol. 1727] ated, we submit below a rate table which is taken in part from page 5 of Exhibit 44 in No. 25627, M. and R. Fies, complainants, the hearing in which was held on September 26, 1933:

Rates and Revenue on Horses and Mules from National Stock Yards, Ill., to Points in C. F. A. Territory, Also the Relationship of the Rates to First Class

From National Stock Yards, Ill., To	Rate on Horses and Mules				
	First class rate	Per cwt. cents (1)	Per cent of first class	Distance short line	12358 rate J. L.
Athens.....Ohio	111	72	64.86	484	57
Buffalo.....N. Y.	134	(2)84.5	63.06	699	66
Charleston.....W. Va.	118	77	65.25	523	57.5
Cleveland.....Ohio	116	75	64.66	518	57.5
Ironton.....Ohio	108	70	64.81	491	57
Marietta.....Ohio	116	75	64.66	532	59
Pittsburgh.....Pa.	125	81	64.80	601	63
Wheeling.....W. Va.	120	78	65.00	558	60
Youngstown.....Ohio	120	78	65.00	572	60
Vincennes.....Ind.	67	44	65.67	148	33
Terre Haute.....Ind.	69	45	65.22	165	35
Crawfordsville.....Ind.	78	51	65.38	218	39
LaFayette.....Ind.	79	51	64.56	228	40
Muncie.....Ind.	87	57	65.52	291	46
Dayton.....Ohio	94	61	64.89	347	49
Columbus.....Ohio	101	66	65.35	416	53
Toledo.....Ohio	104	68	65.38	428	54.5

(1) Class 65 except as noted—Jones' exceptions 130-V I. C. C. 2627. This basis became effective August 15, 1933, to meet truck competition.
(2) Commodity rate.
J. L.—Joint Line.
Tariff Authority: Jones 400-L, I. C. C. 2417.
Jones 484, I. C. C. 2448.
Jones 130-V, I. C. C. 2627.

If we may anticipate that it will be urged in reply to the above that the rates on horses and mules in central territory [fol. 1728] are carrier-made and have not been approved by the Commission, we would add that such rates reflect a long-standing adjustment and are the rates on which the traffic has been and is now moving freely.

As respects the comments appearing on sheets 12 to 14 of the Commission's mimeographed report on further hearing relative to the rate disadvantage to which the dealers at Fort Worth claim they are subjected in regard to shipments of horses and mules from points in Kansas and other regions in that general section, assuming that there is in fact any substantial movement of the traffic, we submit that the conclusion voiced by the Commission that dealers at Fort Worth and Oklahoma City are thereby at a disadvantage is founded upon an erroneous impression. Taking the illustrations used by the Commission of shipments from Emporia and Great Bend, Kans., to Alexandria, La., based on combinations over Kansas City, Wichita and Fort Worth, the rates from Kansas City and Wichita to Alex-

andria, as well as the rates applying from Fort Worth, are on the 12358 scale. Any advantage that Kansas City and Wichita may have over Fort Worth is therefore solely attributable to the intrastate rates in Kansas being lower than the 12358 scale, as is demonstrated on sheet 14 of the report. It does not thereby follow that Fort Worth is at a [fol. 1729] disadvantage, though, since the Texas intrastate rates applying into the Fort Worth market are likewise less than the 12358 rates for like distances.

Aside from that, though, in passing upon a somewhat similar situation in the Shreveport case, 41 I. C. C. 83, at pages 118-19, the Commission pointed to the impropriety of giving consideration to the existence of lower inbound rates at one point than are accorded to other points in competition therewith. Furthermore, under the recent holding of the Supreme Court in Texas & Pacific Ry. Co. v. United States, 289 U. S. 627, it may be questioned whether under § 3 the Commission is authorized to equalize the rates through one market point with those through another.

At all events, to remove any undue prejudice to which the Fort Worth dealers may be subjected by the rate adjustment in question does not require that the southwestern rates be broken down with a consequent dissipation of the revenues of the carriers. They should be left with a free hand to remove any undue prejudice that in the opinion of the Commission may exist by readjusting the rates in question up or down, rather than by forcing upon them without any alternative a reduction of the combination rates now applying through the respective market points used in the illustrations on sheet 12.

[fol. 1730] The fact is, in the final analysis, that the 12358 rates (together with the arbitraries authorized to be added for hauls in Texas differential territory) have been thoroughly subjected to the test of trial and error in the white-hot crucible of experience and the reasonableness thereof has been amply demonstrated. We here have, indeed, a situation closely analogous to that commented upon by the Supreme Court in a patent case, Sinclair Ref. Co. v. Jenkins Co., 289 U. S. 689, wherein the Court in part said (pages 697-98) with regard to ascertaining the value of a patent right:

"At times the only evidence available may be that supplied by testimony of experts as to the state of the art, the

character of the improvement, and the probable increase of efficiency or saving of expense. • • • But a different situation is presented if years have gone by before the evidence is offered. Experience is then available to correct uncertain prophecies. Here is a book of wisdom that courts may not neglect. We find no rule of law that sets a clasp upon its pages, and forbids us to look within."

And to like effect is the following expression taken from the dissenting opinion of Mr. Justice Brandeis in Burnet v. Coronado Oil & Gas Co., 285 U. S. 393, 408, a tax case:

"The court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function."

[fol. 1731] Rates on Horses and Mules Should Be Appropriately Fitted in Rate Structure in Relation to All Rates

In finding that the rates on horses and mules should not exceed by more than 15 per cent the rates prescribed by it to apply on beef cattle in the Southwest, the Commission is proposing to reduce the interstate rates on horses and mules in the Southwest to the extent of perhaps 15 per cent or more. So far as we can determine from its report on further hearing herein, this drastic rate reduction is predicated primarily on the fact that the same level of rates on edible live stock was found proper for application in both western trunk-line and southwestern territories, and upon the expressed conclusion that the only differences between the transportation conditions incident to horses and mules as related to edible livestock are the higher percentage of claim payments and the higher per-car valuation of the former in comparison with the latter.

The Commission has rejected out of hand the numerous rate comparisons whereby it was shown that the earnings derived by the carriers from the handling of horses and mules are substantially less per unit of service than those accruing to them for the transportation at a less cost of [fol. 1732] service of other classes of traffic for like distances. No consideration whatsoever appears to have been given to numerous factors which warrant, and in reality

practically compel, a finding that, in the light of the almost tragic conditions to which consideration was given in determining the measure thereof, the beef cattle rates that now prevail in the Southwest afford no safe or justifiable criteria by which to arrive at a basis of maximum reasonable rates on horses and mules.

We shall now undertake to point out at least some of the many cogent reasons for not relating the rates on horses and mules to the present rates on beef cattle in the Southwest, or in any event for not making the former no more than 115 per cent of the latter. And in achieving that end, we shall first review the many reasons that exist (but not alluded to by the Commission) for treating the rates on horses and mules without relation to those on edible livestock, and we believe we can then convincingly demonstrate that not only are the present rates on horses and mules in the Southwest reasonable in their relation to the general southwestern rate structure, but that the Commission would be well justified in authorizing a still higher level of rates thereon.

To begin with, in commenting upon the unusual expenses incident to the transportation of livestock, the Commission [fol. 1733] remarked that none of such expenses is peculiar to the transportation of horses and mules, thereupon adding that the only substantial transportation disadvantages of horses and mules as compared with other forms of ordinary livestock are a higher percentage of loss and damage claim payments and a higher per-car valuation. From this it is obvious that the Commission, in considering this particular aspect of the case, altogether lost sight of what is perhaps the most important reason from a transportation standpoint for differentiating horses and mules from edible livestock, although mention thereof is made elsewhere in its report. We have reference to the difference in the volume of movement of the former as compared with the latter.

That factor is alluded to on sheet 6 of the report on further hearing, where it is stated that the movement of horses and mules is not more than three to four per cent of the volume of movement of edible livestock, and this is followed by a detail of the number of cars of these two classes of livestock handled by certain named carriers, as also for the year 1930 in the United States as a whole and by twenty

western roads in 1927. And for that matter, as a ground for upholding the reasonableness of a higher level of rates on edible livestock in southern territory than that prevailing in at least some other sections of the country, in its [fol. 1734] report in Livestock, Southern Territory Rates, 171 I. C. C. 721, the Commission pointed out at page 732 that it is well known that in other territories livestock frequently moves in trainload lots. Such is not true, though, of horses and mules. That difference in volume of movement is an important factor to be given consideration in arriving at what are just and reasonable rates is so well established that no citation of authority on the point should be necessary, but for ready reference attention is directed to the following cases: Memphis Furniture and Mfg. Co. v. Railroad Co., 120 I. C. C. 267, 269; California Growers and Shippers Protective League v. Sou. Pac. Co., 129 I. C. C. 25, 41; San Pedro Chamber of Commerce v. Railway Co., 178 I. C. C. 25, 31.

Other factors of less significance than the foregoing, such as the extra care that is exercised in the handling of horses and mules in the way of selecting the newest and best available equipment for their transportation and the providing of covered pens for their protection from the weather, have been alluded to in the foregoing assignments, and for that reason we deem it unnecessary to dwell on the particulars thereof in this connection. Suffice it to say that each of these special services gives rise to a higher cost of transportation, and each of such items, even though it may be of [fol. 1735] no great importance in and of itself, is entitled to due weight and consideration.

Yet another prime reason for not reducing the rates on horses and mules to 115 per cent of the present beef cattle rates in the Southwest, but one altogether ignored by the Commission, is the self-evident fact that in determining what it considered to be the proper level of rates for the transportation of edible livestock in the western district, including the Southwest, the Commission gave no more weight than it could reasonably avoid to the aforesaid "unusual expenses" incurred in the transportation of livestock, but on the contrary based its conclusions for the most part upon what it considered to be the inability of cattle and other edible livestock to stand a higher level of rates—one that would impose on that class of traffic its fair share of the transportation burden.

Substantiation of the foregoing statement may be found in expressions that appear throughout the Commission's report in Livestock—Western District Rates, supra. For example, at pages 43-44 of that report, it was declared that "livestock [the evidence in that case did not relate to horses and mules but only to edible livestock] is not a class of traffic upon which a rate level should be maintained which will compensate for losses or lack of adequate or average earnings on passenger traffic or any other class of traffic." [fol. 1736] And on pages 82-83 thereof we find the following significant declarations:

"A just and reasonable rate level is one that is justly and fairly related to other just and reasonable rates and that covers the cost of rendering the service and includes some profit to the carrier in the aggregate. The extent of that profit is generally determined by the well-known rule of 'what the traffic will bear,' which is largely controlled by the nature of the commodity and the distance it must move to find a market. Livestock, as we have elsewhere indicated in this report, is a commodity which from its nature can not sustain a rate level which will produce more than the cost of rendering the service plus a minimum of profit. Judged even by these standards, livestock in portions of the western district is not at present bearing its fair share of the transportation burden; and under the rate levels herein found reasonable it will do no more than meet these minimum requirements. Indeed there is room for doubt whether the rates found reasonable will, on sheep and hogs, single deck, and, for the longer hauls of sheep and hogs, double deck, and cattle, say above 1,000 miles, produce more than a small margin above the actual cost of transportation."

From the foregoing it is obvious that in arriving at the level of the rates it felt proper to authorize on edible livestock the Commission gave as little heed to the unusual transportation expense incurred in handling livestock as in its opinion could be afforded, and that in consequence [fol. 1737] predominating weight was bestowed on factors other than transportation costs. That being true, in the absence of a convincing showing that another class of traffic is subjected to corresponding deplorable economic conditions, and that that situation has not existed and does not

exist with respect to horses and mules, it is both illogical and indefensible to adopt a low basis of rates predicated upon such extraordinary conditions as the measure of maximum reasonable rates on the latter traffic merely because of a similarity of transportation conditions. We do not overlook the fact that the Commission is suggesting 115 per cent of the beef cattle rates as a proper measure of the rates on horses and mules, but the additional 15 per cent contemplates an allowance for only two points of difference in the transportation conditions incident to these two classes of livestock, and does not take cognizance of the more favorable economic conditions bearing upon the horse and mule traffic.

The point we are endeavoring to make is that, in its finding that the rates on horses and mules should not exceed 115 per cent of the corresponding rates on beef cattle, the Commission has ignored the greater value of the service accruing to the shipper from the transportation of the former than of the latter. In dealing with the rates on [fol. 1738] other commodities, the Commission has not hesitated, where circumstances so warranted, to authorize rates which fully recognize the value of the transportation service performed by the carriers. A striking example of this may be found in the rates fixed by the Commission as reasonable on shipments of live poultry. The rates on this commodity have a peculiarly apposite bearing from a comparative standpoint upon the edible livestock rates. We say this for the reason that there is no great difference in the transportation characteristics of the two commodities, since they both move in special equipment, require expedited service, are accompanied by caretakers, the value and average loading do not differ greatly, and in other respects there is a close analogy between the two.

None the less, in the southwestern revision the Commission fixed as reasonable and proper on shipments of live poultry the column 65 rates, or 65 per cent of first class, whereas the beef cattle rates prescribed to apply in the Southwest, though not having any percentage relation to first class, are in fact but slightly more than one third the live poultry rates found proper by the Commission for observance in southwestern territory. Clearly, judged solely by the respective transportation costs, no such difference in the level of the rates on these respective com-

modities can be justified. The explanation of course, lies [fol. 1739] in the greater value of the service rendered in the transportation of live poultry than in the case of edible livestock. Recognition of this may be found in the Commission's report in No. 17000, Part 5, Furniture, 177 I. C. C. 5, in which the following terse observation on this point is made on page 41:

"No competent authority has yet held that the cost of the service, regardless of the value of the service, is determinative of lawful rates or relationships."

It is precisely because of this consideration that the southwestern carriers have taken the position that the 13535 class A rates will not be unreasonable if applied to shipments of horses and mules in the Southwest. That represents a level of rates approximately half way between those which the Commission itself has prescribed to apply in the Southwest on beef cattle and on live poultry. So far as their respective transportation characteristics are concerned, each of these three classes of commodities has much in common, but when other factors are taken into consideration there is abundant justification for applying substantially higher rates on horses and mules and on live poultry than on edible livestock. The Commission has itself already given play to this distinction in the case of live poultry, and we submit that the same principle should be permitted [fol. 1740] to govern in regard to horses and mules.

Horses and mules are normally produced, transported, marketed and used for purposes altogether different from those for which edible livestock is in demand, and in consequence the two do not come in competition with each other in the markets. To the almost negligible degree that horses and mules are used for food in this country, such use is understood to be for other than human consumption, so even in that respect they are not competitive with edible livestock. Because of the divergent uses to which these two classes of livestock are devoted, horses and mules are ordinarily marketed and sold by the head, whereas edible livestock as a rule sells by the pound. Furthermore, after horses and mules reach their ultimate destination the carriers derive no further revenues from them but edible livestock, on the contrary, for the most part moves out of the final destination point in the form of fresh meat, packing-

house products, and the like, on which the carriers receive an additional revenue. In like manner, the carriers often perform a number of independent transportation services on edible livestock that moves to market points, then to the pastures, and from there again to the markets, etc., but as a rule horses and mules receive at most but two separate [fol. 1741] hauls, one into the market point and the other from there to the point of final destination.

From expressions that appear on sheet 8 of its report on further hearing, the Commission has evidently gained the impression that the evidence of record relating to differences in the value of horses and mules in the origin territory and at the markets does not correctly reflect the actual situation, the thought being voiced that only the better grades of horses find their way to the stock markets. We have already had occasion to comment upon the testimony given by dealers in No. 24674, and reproduced in Exhibit C-352, that the weight of horses and mules shipped to the Southeast averages less than 900 pounds per head. To this might well be added the testimony given by a dealer who appeared as a witness in No. 25767 some four months since. According to his testimony (25767 Tr. 40-42, 66, 67), mules shipped from Fort Worth to Meridian, Miss., that cost about $30.00 or $55.00 were sold at from $65.00 to $150.00 per head, and unbroke horses that cost $4.50 to $8.00 a head in Texas sold at Meridian at from $20.00 to $25.00 a head.

In point of fact, by its own actions, the Commission has itself at least impliedly drawn a distinction between horses and mules, on the one hand and edible livestock, on the other. For instance, only recently, on sheet 13 of its mimeographed report in No. 26000, there appears a somewhat [fol. 1742] extended comment upon the developments in the economic situation with respect to edible livestock that have taken place since the last hearings were held in the western district livestock case, but seemingly there was no public concern about the rates on horses and mules sufficient to bring same to the attention of the Commission in that proceeding, as its report is utterly devoid of any mention thereof. (We have previously alluded to the failure of the complainants in the Texas cases to manifest enough interest in the rates to attend the further hearings held in these proceedings in 1932.) In similar manner, the Com-

mission's failure to include the rates on horses and mules in the No. 17000 investigation of the rates on edible livestock in the western district in itself points to a recognition that the rates on these two classes of livestock are not of necessity subject to the same influences, and in consequence there is no good reason why their rates should be arbitrarily related one to the other.

We pass now to a consideration of other evidence submitted by the carriers in justification of the reasonableness of their rates on horses and mules and of the proposal submitted by them as a reasonable basis of rates for the future. In its report on further hearing, the Commission has virtually rejected outright as a test of the reasonableness of the rates on horses and mules the comparative [fol. 1743] showings of record of the rates on numerous other commodities, saying that the compared commodities "have few transportation characteristics in common with horses and mules." This criticism, however, we maintain, affords no warrant to the Commission for rejecting such rate comparisons, but goes only to the weight thereof, and for many reasons they should be looked to by the Commission in their relation to the rates on horses and mules. The rates on each commodity must fit somewhere in the general rate structure, and to that end a comparison of the rates on horses and mules with those on other commodities in effect in the Southwest, particularly those rated class A, is altogether proper.

It is manifest that the complainants herein had no thought that such rate comparisons were inappropriate, as similar comparisons of the rates on horses and mules with the rates on so-called dead freight were presented by them. Thus, without undertaking an exhaustive review of the record, attention is directed to the rate comparisons on page 12 of Exhibit C-171, witness C. A. Ross (Tr. 1026), and the testimony of witness S. W. W. Carr (Tr. 1059, 1061). Furthermore, it has not been the practice of the Commission heretofore to disregard such rate comparisons with relation to the rates on horses and mules; thus, in the Commission's report on further consideration in Hudson Mule [fol. 1744] Co. v. Railroad Co., 129 I. C. C. 365, the statement is made on page 370 that the rates assailed are shown to compare favorably with the rates applicable on ordinary

dead freight from the river crossings to Atlanta, and the complaint was dismissed.

We appreciate the fact that the Commission has occasionally expressed the view that rate comparisons are not of much probative value in the absence of a showing that the compared commodities move under substantially similar circumstances and conditions. It may be conceded that where an effort is made to demonstrate that a rate on a light loading commodity of relatively high value is unreasonble by comparing same with the rates on other commodities which load heavily and are of low value, or that the latter are too low in comparison with the former, it is entirely logical for the Commission to decline to accord such comparisons any probative value. But when the conditions are reversed, and it is shown that the rates on a light loading commodity that is burdened with extraordinary transportation costs are actually lower than the rates on other commodities that load more heavily and are subject to less onerous transportation costs, the syllogism, robbed of its major premise, at once loses its meaning and authority. We therefore submit that such comparisons are altogether competent and relevant, and that is it most illogical to decline [fol. 1745] to take them into consideration. Such manifestly is the thought underlying the following observation on page 432 of the Commission's report in Container Service, 173 I. C. C. 377:

"The container rates in many instances are lower than the carload rates on similar commodities moving in ordinary equipment. No one contends that carload service is any more burdensome to the carrier than the service rendered on the container. * * * Under the rate adjustment prevailing throughout this country there are few commodities of important movement the rates on which have not been established and are not maintained upon their prevailing general level by reason of the general level of rates on other commodities with which they have been and may reasonably be compared."

Furthermore, in declining to weigh in the light of its experience the relative merits and demerits of such rate comparisons, the Commission is in effect "reneging" from the performance of the very service and function for which it was created. Thus, citing its prior decision in Illinois

C. R. R. Co. v. Interstate Commerce Commission, 206 U. S. 441, 454, the Supreme Court declared in Standard Oil Co. v. United States, 283 U. S. 235, at pages 238-39, that the case before the Commission—

"required consideration of matters of fact and the application of expert knowledge for the ascertainment of the tech- [fol. 1746] nical meaning of the words and a correct appreciation of a variety of incidents affecting their use. It is evident from an inspection of the record, as the Commission in its first report said, that 'both cases concern unusually complicated, technical tariff situations,' the proper determination of which called for the exercise of the trained judgment of that body of experts, 'appointed by law and informed by experience'."

This principle was stated and applied by the Commission in its report in Lackawanna Steel Co. v. Director General, 87 I. C. C. 383, 384, thus:

"It is well known that substantially all of our findings of unreasonableness are, and must of necessity be, based to a great extent upon a measuring and weighing of the rates attacked with other rates which appear to afford a proper basis of comparison, so that, generally speaking, when we find a rate unreasonable, it is in effect, on account of the method by which our conclusion must be reached, a finding that the rate is unreasonable by comparison or relatively. In arriving at such a conclusion we must, of course, be convinced that the rates cited by way of comparison are properly comparable and that, when given the weight to which they are entitled, they sufficiently indicate that the level of the rates attacked is too high. This question calls for the exercise of our judgment upon the particular facts presented."

[fol. 1747] These defendants respectfully submit, in the light of the foregoing, that the Commission should vacate its findings that the present rates on horses and mules in the Southwest are unreasonable or otherwise unlawful, and in lieu thereof should declare that the carriers have justified the reasonableness of the class A rates prescribed in the southwestern revision as appropriate for application on such traffic in the future. The mere fact that these class

A rates would result in substantial increases of the present rates on horses and mules is beside the point, since the question of reasonable rates, as stated by the Commission in its report on reconsideration in Consolidated Southwestern Cases, 139 I. C. C. 535, at pages 559-60, "does not depend upon whether present rates will be increased or reduced." Certainly, by any logical test to which they may be subjected, the 12358 rates are not subject to condemnation, and the evidence of record herein affords ample justification for rates on horses and mules substantially in excess thereof.

Texas Differential Territory

In I. & S. Docket No. 2389 the Commission authorized the arbitraries prescribed therein to be superimposed upon the basic 12358 southwestern rates on horses and mules for the hauls in Texas differential territory, but by its findings on [fol. 1748] further hearing herein, following its decision in the western livestock case, these arbitraries would be denied and allowance for the more onerous transportation conditions encountered in differential territory would no longer be made. The comments previously made in this discussion upon the Commission's failure to fix the rates prescribed by it on edible livestock with due regard to the transportation conditions encountered in the handling of that traffic have equal weight as respects the differential territory rates.

But we may emphasize in this connection what was there said by pointing to the fact that, in the light of substantially the same evidence that was before it in the edible livestock case with regard to transportation conditions in differential territory, the Commission has in a number of the major cases recently decided by it, where more consideration was accorded transportation costs and conditions, authorized for hauls in differential territory the addition of arbitraries or the equivalent thereof to the basic southwestern rates. Thus, in No. 17000, Part 4-A, 171 I. C. C. 381, although declaring that competitive conditions did not warrant the allowance of arbitraries on outbound shipments from that section, the Commission permitted the carriers to publish higher rates on shipments of refined petroleum oil to and between points in differential territory, and in No. 17000,

Part 8, 188 I. C. C. 605, the western portion of Texas, or [fol. 1749] substantially the area commonly known as differential territory, was included in the mountain-Pacific region, in which a higher level of rates on cottonseed products than those prescribed for the Southwest was authorized.

Likewise, in its nineteenth supplemental report (mimeographed) in Consolidated Southwestern Cases, rendered October 4, 1933, following an exhaustive further hearing that dealt almost exclusively with the differential territory rate adjustment, the Commission declared that the adverse transportation conditions in that more sparsely settled area are such as not to warrant the abolition of the differentials previously authorized in that proceeding, as sought by the shipping interests, although it was held that the volume of such differential should be reduced to the extent of 25 per cent; however, even if and when this reduction becomes effective, the carriers will still be left with differentials amounting to 15 per cent of the corresponding basic southwestern rates.

Manifestly, there being no similarity between the economic and competitive conditions appertaining to edible livestock and horses and mules, respectively, the Commission's refusal to permit the addition of differentials to the prescribed basic rates on edible livestock because of the [fols. 1750-1760] economic distress to which that commodity is subject affords no reason or support for its refusing to make due allowance in fixing the rates on horses and mules for the higher transportation costs incurred by the carriers in handling traffic in differential territory.

Respectfully submitted, A. B. Enoch, C. S. Burg, M. G. Roberts, H. H. Larimore, Fred L. Wallace, G. H. Muckley, R. S. Outlaw, Thos. F. King, Robert Thompson, Attorneys for said Defendants.

Texas & Pacific Bldg., Dallas, Texas, Nov. 6, 1933.

[fol. 1761] Before Interstate Commerce Commission

Docket 12358

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al.

v.

DIRECTOR GENERAL et al.

Western Horse and Mule Rates, Dockets 12358, 11018, I. & S. 1483, 13001, 13619, 13627, I. & S. 2389, 13273, and 12268

ANSWER TO PETITION (DATED NOVEMBER 6, 1933) OF SOUTHWESTERN CARRIERS FOR RECONSIDERATION, ETC., OF THIS PROCEEDING—Filed Nov. 23, 1933

Comes now the Chamber of Commerce of Kansas City, Missouri, a party in above entitled proceeding, and makes answer as follows to "Petition (dated November 6, 1933) of the Southwestern carriers for reconsideration and modification of the Commission's findings and conclusions in its report on further hearing herein of July 24, 1933, and for further hearing".

Examination of this petition will disclose that not one single new point is presented; every point brought forward in the petition was covered by evidence which has been presented at various hearings; the record in this case is replete with rate histories, rate comparisons, and showings of economic conditions and prices. Rate levels on horses applying in the various sections of the United States are included.

The record shows that in the west and southwest for years the rates on horses and mules were closely related, although not exactly, to the cattle rates; that the Commission in various cases prescribed rates on horses definitely [fol. 1762] related to the cattle rates. In fact, practically everywhere in the United States the rates on horses are closely related to the cattle rates, except within C. F. A. territory.

Although the carriers for years have maintained rates in the southwest very close to the cattle rates, they now propose that Class A rates should apply.

The evidence plainly showed that transportation conditions surrounding the movement of horses and mules are practically the same as those surrounding the movement of cattle, hogs and sheep; the same sort of cars are used; horses must be stopped to feed, water and rest just the same as cattle; in fact, it is impossible to point out any practical difference in the transportation of horses and mules as compared with cattle and other livestock. This subject is covered in detail, beginning at page 15 of the brief filed by this party, bearing date of January 10, 1929.

The carriers dwell at length on changed economic conditions since this case was heard. We call attention to the fact that this case was reopened March 30, 1932 for the purpose of showing changed economic conditions, and hearing was held at Kansas City beginning May 26, 1932. Conditions have not changed materially since that time.

If the Commission is to be continually reopening and re-reopening cases on such requests as this, we predict that it will never get any cases finally decided.

[fols. 1763-1767] In conclusion, this party requests that the Commission deny this petition for reopening.

Respectfully, The Chamber of Commerce of Kansas City, Mo., by J. H. Tedrow, Transportation Commissioner.

Kansas City, Mo., November 22, 1933.

Certificate of Service

I hereby certify that the foregoing document has today been served by U. S. Mail on all other parties of record.

J. H. Tedrow.

[fol. 1768] Before Interstate Commerce Commission

Docket No. 12358*

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*Includes I. & S. No. 2839, Rates on Horses and Mules to, from, or between Southwestern Points; No. 13619, Ross Brothers Horse and Mule Co. et al. v. Union Pacific Ry. Co. et al.; and No. 13627, Burnett-Yount Horse and Mule Co. et al. v. Abilene & Southern Ry. Co. et al.; also, but only so far as relation is concerned, No. 11018, Wichita Board

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al., Complainants,

versus

DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY et al., Defendants

MOTION TO DELETE EXPRESSIONS IN ANSWER OF THE KANSAS CITY CHAMBER OF COMMERCE DATED NOVEMBER 22, 1933—Filed Dec. 26, 1933

To the Interstate Commerce Commission:

The southwestern carriers defendant herein respectfully move that there be deleted from the answer filed by the Chamber of Commerce of Kansas City, Mo., of November 22, 1933, to the petition of these defendants for reconsideration, etc., of date November 6, 1933, the following statement:

[fol. 1769] "The record shows that in the West and Southwest for years the rates on horses and mules were closely related, although not exactly, to the cattle rates; • • • In fact, practically everywhere in the United States the rates on horses are closely related to the cattle rates, except within C. F. A. territory."

This motion is made on the ground that the foregoing statement is incorrect, in that it is in conflict both with the record herein and with the facts that otherwise exist. The Chamber of Commerce of Kansas City, Mo., likewise incorrectly asserts that conditions have not materially changed since the close of the last hearing in May, 1932.

Remarks

So far as the assertion that the record shows that the rates on horses and mules in the Southwest were closely related to the cattle rates is concerned, it is unnecessary in refutation thereof to look beyond the evidence vouched

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of Commerce et al. v. Director General, as Agent, Alexandria & Western Ry. Co. et al.; No. 13001, Chamber of Commerce of Kansas City, Mo,, v. Alexandria & Western Ry. Co. et al.; No. 13273, Nebraska Livestock Case; and No. 12268, Board of Railroad Commissioners of State of South Dakota v. Chicago & North Western Ry. Co. et al.

for by the Chamber of Commerce of Kansas City, Mo. Thus, by reference to page 26 of Witness J. H. Tedrow's Exhibit C-175 it will be noted that he compared in columns A and B the cattle rates prescribed by the Commission in No. 15686 with the single-line rates on horses and mules prescribed in No. 12358, and in column D it was shown that the ratios of the latter to the former ranged from 117.6 per cent to 144.0 per cent.

[fol. 1770] This alone discloses that in the Southwest the rates on horses and mules were not related, closely or otherwise, to the rates on cattle, but there is additional evidence of record which demonstrates that at other times a similar situation prevailed, as will be noted by reference to witness A. M. Corp's Exhibit C-176, in which the cattle rates established and maintained under Freight Rate Authority No. 2797 are set out on page 11. Comparing those rates with the horse and mule rates prescribed in No. 12358, as set out on page 16 of the exhibit, a simple calculation will disclose that the relation of the latter to the former ranged from a minimum of 103.8 per cent to a maximum of 136.0 per cent. (We have not worked out the ratios of the rates so listed in Exhibit C-176, but the foregoing are the ratios of the 2797 rates on cattle to the 12358 rates on horses and mules that are shown in Exhibit 14 presented at the hearing in No. 25767 et al., on July 6, 1933.) Likewise, there exists at the present time no fixed relation between the rates on horses and mules and those on cattle in the Southwest, as the ratios of the 12358 rates on horses and mules range from 114.3 per cent to 145.5 per cent of the beef cattle rates now observed in southwestern territory pursuant to the orders of the Commission in No. 17000, Part 9. (This statement may likewise be corroborated by reference to said Exhibit 14 in No. 25767, although these percentages may be verified by anyone who is disposed to make the appropriate mathematical calculation.)

[fol. 1771] There is similarly no fixed relation between the rates on horses and mules and those on beef cattle in southern territory, and with respect to western trunk-line territory it will be noted from findings made by the Commission in Barnett Mule Co. v. Railway Co., 167 I. C. C. 75, that from Nebraska points to National Stock Yards the assailed rates on horses and mules ran from 120 to 140 per cent of the cattle rates, that from Iowa points the range was from 125 to 151 per cent of the cattle rates, that from Kansas points

the ratio was from 115 to 153 per cent, that from Missouri points it was from 119 to 149 per cent, and that from Minnesota points the range was from 115 to 128 per cent of the cattle rates. The Commission nevertheless declined to condemn the rates under attack in that complaint. And in its recent mimeographed report in No. 24486, Galesburg Horse & Mule Co. v. Railway Co., decided October 21, 1933, the rates to Galesburg from a number of origin points in Iowa listed on sheet 7 are shown to be far in excess of the corresponding beef cattle rates and to bear no fixed relation thereto. Indeed, the rates on horses and mules from Fonda and Ruthven, Iowa, are 70 per cent or more in excess of the corresponding beef cattle rates.

As the Commission's Rules of Practice do not permit the filing of a reply to an answer to a petition for reconsideration or the like the only means the carriers have available [fol. 1772] to correct such erroneous statements as the foregoing is to file a motion along the lines of this instrument. The very fact that this complainant is not content to rely upon the facts, whether of record or not, is in and of itself a sign of weakness in its evidence.

Relative to the statement that there has been no material change in conditions since May, 1932, we take occasion to remark that there has been such a decided upturn in the economic conditions relating to production and marketing of horses and mules that official note thereof has been taken by at least two administrative agencies of the United States Government. Thus, in a brochure recently put out by the Bureau of Census entitled "The Farm Horse," in which (page 4) a review is made of the farm horse situation as it appeared in February, 1933, it is declared (page 81) that there are definite indications of a "very strong upward movement" in the selling prices of horses and mules in the major markets, accompanied by a great increase in the volume of sales. And even more recently, in "The Agricultural Outlook for 1934" issued by the United States Department of Agriculture, Miscellaneous Publication No. 182, November, 1933, the statement is made on page 55 that on September 15th of this year the average farm price of horses and mules was about 17 per cent greater than the average price a year earlier, and that at some markets the prices of farm horses were as much as $25.00 a head higher [fol. 1773] in October, 1933 than they were at the same time last year.

Of course, for these data to be made available to the Commission for purposes other than its consideration of the pending petition for reconsideration, a further hearing would be necessary, but such positive expressions as the foregoing are not at all in consonance with the assertion that there has been no material change in conditions since the last hearings were held in these proceedings. On the contrary, there have been no corresponding developments in the economic conditions relating to edible livestock, which still further bears out our contention that there is no factual justification for relating the rates on horses and mules to those on beef cattle. Indeed, on page 67 of its decision in No. 17000, Part 9, dealing with the rates on edible livestock in the western district, 176 I. C. C. 1, the Commission manifested a realization that the uniform rate territories therein prescribed "might not be appropriate for any other commodity." The rates on horses and mules were not under review in that proceeding.

[fol. 1774] Respectfully submitted, A. B. Enoch, C. S. Burg, M. G. Roberts, H. H. Larimore, Fred L. Wallace, G. H. Muckley, R. S. Outlaw, Thomas F. King, Robert Thompson, Attorneys for said Defendants.

Texas & Pacific Bldg., Dallas, Texas, December 22, 1933.

[fol. 1775] Interstate Commerce Commission

Western Horse and Mule Rates

No. 12358

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al.

v.

DIRECTOR GENERAL OF RAILROADS, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY, et al.

Investigation and Suspension Docket No. 1483

Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and Other Points

Investigation and Suspension Docket No. 2389

Rates on Horses and Mules, To, From or Between Southwestern Points

No. 11018

WICHITA BOARD OF COMMERCE et al.

v.

DIRECTOR GENERAL OF RAILROADS, AS AGENT, ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

No. 12268

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF SOUTH DAKOTA

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY et al.

No. 13001

CHAMBER OF COMMERCE OF KANSAS CITY, MO.,

v.

ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

No. 13273

NEBRASKA LIVESTOCK CASE

No. 13619

ROSS BROTHERS HORSE & MULE COMPANY et al.

v.

UNION PACIFIC RAILROAD COMPANY et al.

No. 13627

BURNETT-YOUNT HORSE & MULE COMPANY et al.

v.

ABILENE & SOUTHERN RAILWAY COMPANY et al.

ORDER—Feb. 5, 1934

Upon further consideration of the records in the above-entitled proceedings, and consideration of the request of Judge Albert L. Reeves, of the District Court of the United States, Western District of Missouri and of defendants for postponement of the effective date of the order:

It is ordered that the order entered in these proceedings dated December 11, 1933, which is by its terms effective March 8, 1934, be, and it is hereby modified so as to become effective April 17, 1934 upon statutory notice.

And it is further ordered that in all other respects the said order shall remain in full force and effect.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1776] Interstate Commerce Commission

Western Horse and Mule Rates

No. 12358

Texas Livestock Shippers Protective League et al.

v.

Director General of Railroads, as Agent, Abilene & Southern Railway Company, et al.

Investigation and Suspension Docket No. 1483

Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and Other Points.

Investigation and Suspension Docket No. 2389

Rates on Horses and Mules, To, From, or Between Southwestern Points

No. 11018

Wichita Board of Commerce et al.

v.

Director General of Railroads, as Agent, Alexandria & Western Railway Company et al.

No. 12268

Board of Railroad Commissioners of the State of South Dakota

v.

Chicago & Northwestern Railway Company et al.

No. 13001

CHAMBER OF COMMERCE OF KANSAS CITY, MO.,

v.

ALEXANDRIA & WESTERN RAILWAY COMPANY et al.

No. 13273

NEBRASKA LIVESTOCK CASE

[fol. 1777]

No. 13619

ROSS BROTHERS HORSE & MULE COMPANY et al.

v.

UNION PACIFIC RAILROAD COMPANY et al.

No. 13627

BURNETT-YOUNT HORSE & MULE COMPANY et al.

v.

ABILENE & SOUTHERN RAILWAY COMPANY et al.

ORDER—March 12, 1934

Upon further consideration of the records in the above entitled proceedings, and consideration of the request of Judge Albert L. Reeves, of the District Court of the United States, Western District of Missouri:

It is ordered that the order entered in these proceedings dated December 11, 1933, which by its terms, as amended by order of February 5, 1934, is effective April 17, 1934, be, and it is hereby, further modified so as to become effective May 17, 1934, upon statutory notice.

And it is further ordered that in all other respects the said order shall remain in full force and effect.

By the Commission.

George B. McGinty, Secretary.

[fol. 1778] EXHIBIT "YY"

H. W. H.

[fol. 1779] Fourth—Section Order No. 11485

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 3rd day of February, A. D., 1934.

Horses and Mules From, To and In Southwestern Territory

Upon consideration of the matters and things involved in fourth section application No. 15445 (amended), filed by F. A. Leland, Agent, on behalf of carriers parties to Agent J. E. Johanson's tariff I. C. C. No. 2457, for relief from the long and short haul provision of section 4 of the Interstate Commerce Act, which application is hereby referred to and made a part hereof:

It is ordered that, until the effective date of the order to be entered pursuant to a report in application No. 15445 (amended) and in those instances in which the carriers parties thereto are authorized to establish and maintain, over routes formed by the lines of their companies, rates on hogs, in carloads, from and to points hereinafter described, under authority of fourth section order No. 11135 entered in Livestock,—Western District Rates, 190 I. C. C. 611, as modified, which order is hereby referred to and made a part hereof, the applicants herein be and they are hereby, authorized to establish and maintain, over the same routes, for the transportation of horses, mules, burros and asses in carloads, between points in southwestern territory, and between points in southwestern territory, on the one hand, and points in Western Trunk Line territory, on the other, also from, to and between adjacent points as described in application No. 15445, as amended, the lowest rates that may be constructed over any line or route, from and to the same points, on the bases prescribed or approved in Western Horse and Mule Rates, 195 I. C. C. 417, which report is hereby referred to and made a part hereof; and to maintain higher rates on horses, mules, burros and asses, in

carloads, from, to and between intermediate points; Provided, That the rates from, to and between higher rated intermediate points included in Livestock-Western District Rates, supra, shall not exceed rates constructed on the basis prescribed or approved in Western Horse and Mule Rates, supra; Provided further, That, the rates from, to and between higher rated intermediate points not included in Livestock-Western District Rates, supra, shall not be increased except as authorized by this Commission; And provided further, That, in no case shall rates from, to and between higher rated intermediate points exceed the lowest combination of rates subject to the Interstate Commerce Act.

It is further ordered that the relief herein granted with respect to rates on horses, mules, burros and asses shall be subject to such additional terms and conditions as are contained in fourth section order No. 11135 with respect to rates on hogs.

By the Commission.

George B. McGinity, Secretary. (Seal.)

[fols. 1780-1782] EXHIBIT "ZZ"

H. W. H.

[fols. 1783-1815] Rules of Practice Before the Interstate Commerce Commission in Proceedings Under the Interstate Commerce Act and Related Acts [1]

. . . . . .

[fols. 1816-1829] 2. [Records in other proceedings, how offered; objections.] In case any portion of the record before the commission in any proceeding other than the one on hearing is offered in evidence a true copy of such portion shall be presented for the record in the form of an exhibit unless—

(1) The party offering the same agrees to supply such copy later at his own expense, if and when required by the commission; and

---

[1] These rules are prescribed under authority of sections 5, 15a, 17, and 19a of the interstate commerce act.

(2) The portion is specified with particularity in such manner as to be readily identified; and

(3) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any other portion offered by any other party may be incorporated by like reference subject to (1) and (2); and

(4) The presiding commissioner or examiner directs such incorporation.

Any portion so offered, whether in the form of an exhibit or by reference, shall be subject to appropriate objection.

* * * * * * *

[fol. 1830] (h) [Miscellaneous provisions.] In addition to the above indicated information, applications should show:

1. Any other circumstances which are relied on as constituting a special case within the meaning of section 4 (1) of the act.

[fols. 1831-1898] 2. The relative location of the various lines or routes, the competitive points, and representative intermediate points at which higher rates are to be charged should be shown on a map, made a part of each application.

3. The fact that a point is a large producing or consuming market and that intermediate points are not consuming or producing points is not considered by the commission to be a sufficient reason for relief from the fourth section. Rule 27 of Tariff Circular 20 was promulgated for the purpose of covering such situations and obviating the necessity of publishing "paper" rates from or to intermediate points.

4. Application which upon analysis are found to contain incomplete and inaccurate or unreliable data will be denied forthwith without prejudice to the filing of a new application.

5. If the commission denies an application and the carrier presents a new application based upon new or additional facts in justification of the proposed rates, fares, or charges, such facts should be clearly indicated as such,

and the modified application must specifically refer to the previous application and the number of the order denying the same.

6. Applications should be in the approved form shown in Appendix 2 and should conform to the specifications contained in Rule XXI.

. . . . . .

[fols. 1899 & 1900] EXHIBIT "AF"

H. W. H.

Western Union

(Copy)

Kansas City, Mo., Feb. 2, 1934.

Hon. Wm. E. Lee, Chairman, Interstate Commerce Commission, Washington, D. C.:

The principal Southwestern Railroads have today presented to me Bill of Complaint seeking decree enjoining Commission's order December eleventh nineteen thirty three in Western Horse and Mule Rates one nine five icysea four seventeen other than with respect to dockets twelve two six eight and thirteen two seven three and also enjoining Fourth Section Order eleven three forty dated July twenty fourth nineteen thirty three Stop Petitioners seek interlocutory injunction with final decree upon hearing which probably can be held about March ninth nineteen thirty four Stop As no occasion for assembling statutory court prior final hearing would exist if effective date aforesaid orders be postponed suggest Commission accordingly extend effective date both said orders forty days Stop Wire Western Union.

Albert L. Reeves, United States District Judge.

[fols. 1901-1904] Exhibit "AII"

H. W. H.

Fifteenth Census of the United States

Census of Agriculture

The Farm Horse

U. S. Department of Commerce, Bureau of the Census, Washington

[fols. 1905-1907] The Farm Horse

By Z. R. Pettet, Agricultural Statistician

Introduction

This is a study of the farm-horse situation in the United States and closely related problems, particularly the causes and effects of the decrease in the number of work animals in recent years, brought out in the analysis of census statistics.

[fols. 1908-1980] This review covers the farm horse situation as it appears in February, 1933.

[fol. 1981] Chapter VIII.—Résumé of Trend in Number and Value of Horses and Mules and the Outlook for the Future

The data derived from the census showed the essential status of the horse situation April 1, 1930. Since then the trend downward, in numbers of horses has continued, and the trend in mules is also now downward, according to indications of the Department of Agriculture and according to what might be expected from the extremely small birth rate of mules indicated in the census (ratio of colts to mature animals). The relatively high proportion of mules and the fact that they live on an average to a somewhat greater age than horses, has tended to modify the rapid decrease in the total work animals when compared to the much more rapid decrease in the number of horses. The excess of the mortality rate 7.50 over the birth rate 3.02 for all horses and mules, and the constantly rising mortality rate, pointed to an acute shortage in horses and mules as soon as the

surplus power represented by tractors and the unnecessary reserves of horses and mules formerly carried on farms, are exhausted. That point now appears to have been reached. Breeding operations in 1932, judging from the number of registered stallions in the various States, do not appear to have been appreciably above preceding seasons. The January 1 price of horses on farms in 1933, after reaching the lowest point in 30 years last season, January 1, 1932, has again started upward. The inventory of mules on farms January 1 had not yet begun to rise. The price received by farmers for animals and the selling price in the major markets, however, have experienced very material increases at the time of this writing showing definite indications of very strong upward movement.

The receipts (and sales) of horses and mules in major markets also indicate strongly that the low point has been passed and that the price trend is decidedly upward. From three to five times as many horses and mules have been received and sold in these markets in the past six months as in the corresponding period of the year previous.

Table 16.—Receipts of Horses and Mules at Selected Markets, Six Months' Period, August to January, 1931-32 and 1932-33.

	Selected markets, 1932-33	Selected markets, 1931-32	Atlanta		Memphis	
			August, 1932, to January, 1933	Preceding year same period	August, 1932, to January, 1933	Preceding year same period
Total....	32,381	11,574	6,233	2,426	11,227	2,094
January....	14,825	5,456	3,624	1,254	6,655	1,805
December..	4,336	1,461	677	192	1,557	173
November..	3,356	1,344	1,102	316	938	64
October....	4,536	1,604	461	493	1,594	.....
September..	3,804	939	316	62	386	28
August....	1,524	770	53	109	97	24

	Montgomery		San Antonio		Fort Worth	
	August, 1932, to January, 1933	Preceding year same period	August, 1932, to January, 1933	Preceding year same period	August, 1932, to January, 1933	Preceding year same period
Total....	1,339	806	3,795	642	9,787	5,606
January....	673	248	885	203	2,988	1,946
December..	135	133	497	80	1,470	883
November..	60	92	482	81	774	791
October....	222	198	944	67	1,315	846
September..	235	105	846	85	2,021	659
August....	14	30	141	126	1,219	481

Another indication of change in the horse situation is the very material decline in the number of horses slaughtered at inspected plants. The peak was reached in 1930, when the number slaughtered was 138,827—an average of 11,000 [fol. 1982] a month. The number has declined sharply during the recent months and in February, 1933, was only 2,688. For the eight months ending February, 1933, the number had fallen to 41,624 as compared to 81,125 for the eight months ending February, 1932.[1] This decrease in slaughter probably means two things: First, that the price of animals that are nearly worn out has increased on account of the emergency demand so that they are worth more than the price that can be paid by slaughterers. Second, the supply of older horses available and suitable for slaughter is sharply decreasing.

With the price of grain as low as at present and with the farmers purchasing power at 49 per cent of the 5-year average, August, 1909, to July, 1914, it is difficult if not impossible for farmers to buy gas and oil and pay for repairs to tractors, not to mention purchasing new tractors. With oats at 13 cents a bushel and corn at 19 cents most farmers probably figure it is cheaper to operate with horsepower than with tractors.[2]

The steady movement of city population back to farms creates additional demand for work stock and doubtless has something to do with the rising prices. With the prospect of a shortage of animals in the future, cheap grain and rising prices of horses and mules, the raising of colts promises to become more profitable, and this offers an additional argument for increasing the use of horses and mules under the present conditions.

While an accute shortage of mules has not yet occurred, due to rather heavy breeding operations up to 1924 or 1925, the relatively low mortality rate of mules and the sufficiency for current needs, the trend promises to follow that of horses. The extremely low birth rate (ratio of colts to grown animals) indicated by the last census, however, shows

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[1]March, 1933, Crops and Markets, U. S. Department of Agriculture.

[2]United States Department of Agriculture Price Index.

that there will be a definite shortage of fresh animals in the near future. The number of breeding jacks has declined seriously and by far the large proportion of work animals being sold in the Southern markets are mules. Indeed the sales of mules in major markets exceed those of horses. For example, the January average for the period 1928-1932 shows that 38,190 mules were received as against 17,972 horses. A perusal of the little table previously presented will give a fair idea of the Southern markets where mules are the principal item.

Because of the fact that the cotton States produce relatively few of their own mule colts and offer a constant market, the outlook for mules is of particular interest. It may be further noted in regard to mules that most of them are sold in territory which has small farms with a small acreage per animal and which has few tractors. The limiting factor in that territory is the amount of cotton which can be picked by one family and this makes large scale farming difficult and prevents the use of much heavy machinery, unless and until a satisfactory mechanical cotton picker is devised which will change the situation. The mechanical cotton picker, at the present time, has not been sufficiently successful to warrant anticipation of conditions in the cotton belt similar to those produced in the wheat belt upon the coming of the combine harvester-thresher and the header. Mules, therefore, so far as can be seen at present, do not face the probability of being replaced by machinery, while it may be advantageous in much of the rest of the United States to replace horses in the future by tractors and improved machinery when present price conditions are readjusted.

Farmers interested in raising horses and mules, however, are invited to consider the effects of a possible cotton holiday or restriction of acreage such as has been proposed. It might be further pointed out that the time required to raise horses and mules to marketable age, about 4 years, will prevent any immediate or great surplus production. This very greatly lessens the danger of overproduction such as confronts producers of all crops and livestock which [fols. 1983 & 1984] can be marketed within a year. To summarize the outlook, the conditions appear favorable for the increased use of both horses and mules for the immediate

future, while the outlook for mules appears to be excellent for an indefinite period of time.

[fol. 1985] EXHIBIT "AI"

H. W. H.

[fols. 1986-2039] United States Department of Agriculture, Miscellaneous Publication No. 182, Washington, D. C., November, 1933

The Agricultural Outlook for 1934

Prepared by the Staff of the Bureau of Agricultural Economics, Assisted by Representatives of the Agricultural Adjustment Administration, the Extension Service, and the State Agricultural Colleges and Extension Services

* * * * * * *

[fol. 2040] Horses and Mules

Developments during the last 2 years indicate the beginning of a shortage in the supply of work stock, which may eventually reach serious proportions. The time when this shortage will be greatest must necessarily depend somewhat upon programs of acreage reduction, but present indications are that with the proposed programs in effect, the probability of overbreeding will be remote. Even should any material increase in the purchasing power of farmers result in an increase in the use of mechanical power, the future need for work stock to replace an increasing proportion of old animals probably will be reflected in a growing demand for good animals for several years.

Supplies

Numbers of horses and mules both on farms and not on farms have decreased markedly for several years. On January 1, 1933, horses on farms numbered 12,163,000, which is only 57 per cent of the number reported on January 1, 1918, when the largest number on record was reported. On January 1, 1933, the number of mules on farms was 4,981,000, which was 84 per cent of the number on

farms in 1925, when mule numbers were greatest. The decreases in horses and mules not on farms (in cities, towns, and elsewhere) since 1920 have been relatively much larger than the decreases on farms. Estimates based upon changes in selected counties and cities, shown by enumerations made by the Census Bureau for 1920 and 1930, indicate that the number of horses not on farms in 1930 was about 300,000 head and of mules about 75,000 head. In 1920 the census enumerated 1,705,000 horses and 378,000 mules, not on farms, and in 1910, 3,183,000 horses and 270,000 mules. The percentage decreases between 1920 and 1930 amount to about 80 for both horses and mules. With such a small number of horses and mules not on farms, farmers can no longer expect to add to their supply of work stock with animals released from work in the cities.

It is evident that the present numbers of work horses and mules cannot be maintained, because the number of animals reaching working age is not large enough to replace animals of working age that die. Furthermore, the efficiency of work horses is declining because of increasing average age. The fact that since 1929, prices of horses and mules have declined relatively less than have those of any other important agricultural product, indicates that a shortage of horses and mules was developing. From September 15, 1929, to September 15, 1932, farm prices of horses declined 28 per cent and farm prices of mules declined 31 per cent. At the same time prices of all farm products declined 58 per cent. On September 15, 1933, the average farm price of horses was $69 per head, and of mules $77 per head, which, in both cases, was about 17 per cent greater than the average price a year earlier. These increases were approximately the same as the percentage increase in the average price of all farm products.

Demand

The relatively high cost of tractors, gasoline, and oil as compared with costs of feed that farmers themselves produce is apparently causing many farmers on the small and moderate-sized farms to again look to horses for their source of power. Consequently, prices of farm horses at some markets were as much as $25 a head higher in October 1933 than they were a year earlier. Heavy draft horses, weighing 1,800 pounds and up, have but a limited

outlet. The well-broken handy-weight horses, thick and blocky in type and of good quality, weighing from 1,400 to 1,600 pounds, are in good general demand, with prices at midwestern markets ranging from $100 to $150 per head, depending on individual merit.

The tone of the mule markets during September and early October of 1933 was considerably more optimistic than it has been for several years. Receipts of mules at [fol. 2041] public stockyards during the first 8 months of 1933 were about 45 per cent larger than those for the corresponding period of 1932. During the spring and fall of 1933 there was a broad demand, and prices of September were back to those of the high time of the year in February and March, and about $5 to $15 a head higher than those in September 1932. There has been more active interest at markets in mules to be used in the South than at any time in the last 5 years. Such mules in early October 1933 were bringing as much as $15 a head more than similar mules were bringing a year earlier.

For several years the number of colts raised on farms has not been sufficient to maintain the present number of work horses and mules, as indicated by figures for the last 3 census years. In 1920, about 12.8 per cent of the horses on farms were less than 2 years of age. By 1925 the percentage had dropped to 6.7, and in 1930 it had increased slightly to about 7 per cent. On the basis of the 1930 census figures the number of colts produced in 1928 and 1929 was only about one half of the number needed to maintain a constant horse population equal to that of 1930. In 1920 about 14.4 per cent of all mules on farms were under 2 years old, in 1925 only 6.6 per cent were under 2 years old, and in 1930 only about 3.1 per cent were under 2 years old. The rate of mule-colt production in 1928 and 1929 was at best only about one-third enough to maintain the mule population of 1930. Since 1930, horse and mule numbers have continued to decline; breeding of mares has increased somewhat but is not yet sufficient to maintain the present numbers of horses and mules.

General Prospects

The decreases in the numbers of horses and mules due to the declining number of colts raised each year have been accompanied by increases in the average ages of horses

and mules. Reports from crop reporters of the Department of Agriculture show that between 1927 and 1933 the average age of horses on their farms increased from 9.6 years to 10.8 years and of mules from 8.5 years to 11.2 years. Computations made from estimates of the number of horse and mule colts raised each year from 1918 to 1932 indicate that at the beginning of 1933 about 36 per cent of all horses and 54 per cent of all mules on farms were over 15 years of age. Hence, animal power on farms has decreased not only from a decline in the number of units but also from a depreciation in the units remaining.

The number of work horses and mules probably will continue to decline for several years. This decline can be checked only if more extensive breeding for both horse and mule colts is soon resumed. Available reports from a number of States for the enrollment season of 1933 indicate that there has been a general increase over the previous year in stallion and jack enrollment. There is probably more interest in breeding for horse and mule colts at this time than has been evident for a great many years. This interest is indicated by the fact that good 2- and 3-year-old fillies are bringing from $10 to $15 more per head than geldings of the same age, type, and quality. An increased interest is also shown for mares, colts, and young animals up to 4 years old. There is, however, no indication at this time that there is any likelihood of overbreeding. A scarcity of good sires and a shortage of young work mares suitable for breeding purposes probably mean that even with a strong price incentive to increase breeding, progress will be slow for some years. It is generally felt that if breeding were expanded very materially at this time there would be little likelihood of stopping the decrease in horse and mule numbers for several years, because of the relatively larger numbers of old animals.

The horse-and-mule outlook may be modified somewhat by the future course of mechanization of agriculture, and by the future policy of the Agricultural Adjustment Administration with respect to acreage reduction. According to the census, the number of tractors on farms increased 274 per cent from 1920 to 1930, to a total of about 920,000 in the latter year. Truck numbers on farms increased about 547 per cent, to a total of 900,385 in 1930. In 1920 the number of horses and mules on farms was

more than ample to furnish all needed motive power on farms. At the beginning of 1933 the number of horses and mules alone would not have been sufficient to furnish the motive power for the farm operations of that year; neither would it have been sufficient to furnish the motive power if the acreages of crops in the United States were reduced in line with present plans for acreage control.

The future need for more or less work stock will depend upon whether the use of mechanical power increases or decreases, and upon the acreage of crops grown. During [fols. 2042-2095] the last 2 years an apparent shortage in animal power on farms in many States was due to some extent to the financial situation in agriculture which has made it difficult for farmers to buy replacements, repairs, and fuel for motor machinery. This situation forced the farmer to depend more upon animal power for farm work and has had some influence upon the demand for horses and mules. Should crop acreage be reduced materially during the next few years, such reduction will result in the need for less motive power on farms than at present. It is improbable, however, that over a period of 2 or 3 years, such reduced need for power would more than offset the reduction in power available on farms, because of declining numbers of horses and mules, and because of the tendency of farmers to purchase little mechanical power equipment in recent years. There is no reason to suppose that, from the long-time standpoint, the use of tractors and trucks for farm work has reached its peak. Eventually, some expansion in the use of these machines may be necessary merely to offset the rapidly decreasing numbers of work animals, since under the most favorable conditions it will be some time before this decrease can be halted. It is possible, of course, that new developments in the field of mechanical power may be an important factor in establishing the limits of any upward movement in the demand for work stock.

It should be remembered that horses are largely a by-product of farming. Good breeding mares can be used as a source of motive power and at the same time produce colts that will maintain the power plant. Many farms are well suited for the economical production of a few colts to replace worn-out work animals and to be sold. This is particularly true in the areas in which there is an abundance of

cheap roughage. It seems probable that farmers will not be able to replace their present work stock a few years from now at prices now prevailing, and many who expect to continue to use animal power can well afford at this time to lay plans for their future supply of work stock. Mares that can work and produce colts form the economical basis for such plans. If the mares are young, the farmer will be in better position to expand colt raising as the demand for colts increases.

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[fol. 2096] EXHIBIT "AJ"

H. W. H.

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[fols. 2097-2136] Horses.—The number of horses on farms continued to decrease in 1933 but at a less rapid rate than in recent years. The number January 1, 1934, was 11,942,000 head, a decrease of about 2 per cent from January 1, 1933. For the first time in many years the number of colts under 1 year considerably exceeded the number of such colts a year earlier and all evidence points to a sharp increase in colt raising in 1933. The value per head on January 1, 1934 was $66.42, a sharp increase over a year earlier and the highest since January 1, 1930. The total value January 1 this year was $793,184,000 compared with $655,653,000 on January 1, 1933.

Mules.—The number of mules also decreased again in 1933 and at about the same rate as in other recent years. The number on January 1, 1934, was 4,931,000 head, a decrease of 2 per cent. Mule colts under 1 year showed only a slight increase over a year earlier. The value per head of mules of all ages increased from $60.17 on January 1, 1933, to $81.56 on January 1, 1934, and the total value from $302,918,000 to $402,171,000 on January 1, 1934.

. . . . . .

[fol. 2137] EXHIBIT "AL"

H. W. H.

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are

true copies of pages 91 to 105, inclusive, and extract from page 90, of the transcript of the stenographer's notes of the hearing held September 26, 1933, in Birmingham, Alabama, before Examiner Griffin, in Docket No. 25627; M. Fies and R. Fies, Co-Partners, doing business as Fies & Sons, et al. v. Alabama Great Southern Railroad Company, et al., the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 16th day of March, A. D. 1934.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 2138] Before the Interstate Commerce Commission

Docket No. 25627

M. Fies and R. Fies, Co-partners, Doing Business as Fies & Sons, et al., Complainants,

vs.

Alabama Great Southern Railroad Company et al., Defendants

Birmingham, Alabama, September 26, 1933.
9 A. M.

Before C. W. Griffin, Examiner.

(Omission)

Exam. Griffin: We will adjourn until one o'clock.

(Whereupon at 12:10 P. M., September 26, 1933, a recess was taken until 1:00 P. M. of the same day.)

After recess, 1 P. M.

Exam. Griffin: Let's go ahead.
Mr. Greene: I will examine Mr. Fies.

M. Fies, being called as a witness, being duly sworn, testified as follows:

Direct examination.

[fol. 2139] By Mr. Greene:

Q. State your name and address.
A. M. Fies, Birmingham, Alabama.

Q. Are you one of the complainants in the case of M. Fies R. Fies, co-partners doing business as Fies & Sons?

A. Yes.

Q. What official position do you hold with the Montgomery Mule Company, Inc., a corporation, complainant in this proceeding?

A. Vice President.

Q. Mr. Fies, how long have you been engaged in the horse and mule business?

A. More than 50 years.

Q. Are the concerns in which you are an officer and partner, Fies & Sons and Montgomery Mule Company, engaged extensively in the wholesale mule and horse business?

A. Yes, and they also do a retail horse and mule business.

Q. Have you been at a disadvantage selling mules and horses shipped in from the west and southwest——

Mr. Martin: I object to that question; calls for a conclusion. Let him state the facts.

Exam. Griffin: There are no Section 3 allegations in this case. What do you want to show?

Mr. Greene: We want to show by what we consider an unreasonably high basis of rates that we have been placed at a disadvantage. This is one of the ways I have to prove that. It is not section 3.

[fol. 2140] Mr. Martin: Whatever you are attacking, the question is improper in that it calls for a conclusion.

Mr. Green: Well, I will omit that question. It really isn't particularly important.

Exam. Griffin: Just ask him to state facts rather than conclusions.

Q. Mr. Fies, since the latter part of 1930 to date, your companies have received approximately five thousand head of mules and horses from East St. Lous, Illinois, and points in the west and southwest. Was this a large or small percentage of the total number of head handled during this time?

A. Small percentage.

Q. Would you have handled a larger number from these origins if the rates hal been on a lower basis?

Mr. Martin: That calls for a conclusion.

Mr. Greene: He knows of his own knowledge what he would have done.

Mr. Martin: No, he doesn't.

Mr. Thompson: There are so many circumstances and conditions that control things like that.

Exam. Griffin: We will take it as his opinion. The objection is overruled.

Mr. Thompson: We except.

A. Yes, I know if there had been less freight rate, we would have handled more.

[fol. 2141] Q. Mr. Fies, why did you pay these high rates and make the shipments which were made?

A. We were forced to secure a supply when Southern raised animals were not available.

Q. Have the prices on horses and mules during the past three years been low or high as compared with normal values?

A. Low.

Mr. Martin: That is another statement of opinion that should be supported by facts.

Mr. Greene: Mr. Fies has been in the business fifty years and should be competent.

Mr. Martin: I don't doubt his competency.

Q. Have the prices of mules for the past three years been higher or lower than from 1927 through 1929?

Mr. Martin: Same objection.

Exam. Griffin: Objection overruled.

A. They are lower.

Q. What type of horses and mules has there been the largest demand for the past three years?

A. Small animals, farm mules.

Q. Mr. Fies, I want you to tell me and the Commission, during the past three years, during which time, as has been stated, the biggest demand was for small, cheap farm animals, whether or not it has been customary for dealers to take those mules into the stables and yards and fatten them up before shipping or were they shipped in the condition [fol. 2142] which is known in the livestock business as thin?

A. They have not been held to be fed; nor is the custom prevailing in the former years—feeders of mules in Kentucky and Missouri, feeding mules to get them fat—that

has all been cut out and stopped. It had to be added into the prices and they couldn't be sold. Consequently, thin mules have been shipped, and light mules.

Q. Is this the type that has been shipped in most instances from the points of origin involved in this proceeding?

A. Yes.

Q. Are you able to sell the mules and horses drawn in from East St. Louis and Southwestern points and Western points at a higher price than the animals which you obtain in the south?

A. No.

Q. Are you familiar with the general business conditions. I will ask you this as a predicate. Mr. Fies, are you interested rather extensively in business concerns in and around Birmingham and in the South?

A. Yes.

Q. You have a knowledge, then, of general business conditions which have prevailed in Southern territory during the past three years?

A. I think so, yes.

Q. In your judgment, have those business conditions and [fol. 2143] economic conditions been better or worse than they were in what is known as the normal or three years previous, say, from 1926 to 1929?

Mr. Thompson: Is that a normal period?

A. It looks like foolishness. They are worse than they have been in many years.

Q. In respect to the horse and mule business, has it been as good or better than general business conditions?

A. I think it has been on a par with general lines of business.

Mr. Greene: That is all Mr. Fies; you may cross examine.

Cross-examination.

By Mr. Walker:

Q. Why is it you have been buying smaller mules and horses in the last few years?

A. In former years, in the industrial work, construction work, road building, lumber business, heavier mules were used.

Q. I see. In hard times, on account of the character of the work, they do use smaller mules, and when business picks up the size of the mules for which there is a demand will increase?

A. Yes. If we get back to industrial activity, I will say yes.

Mr. Walker: That is all.

By Mr. Martin:

Q. Mr. Fies, have you been buying substantial quantities of mules in Nebraska and that territory up in there? [fol. 2144] A. We have had mules, I would say, mainly from Kansas City and St. Louis and Fort Smith and that section.

Q. You don't know from what country points those mules largely come?

A. I don't know, but I can tell you what I think.

Q. The reason I asked that question is because in prior cases similar to this, it has been testified by men, who, I think, were well informed, that they had been increasing their purchases in what is known as Western Trunk Line territory; that includes Nebraska, parts of Kansas, Colorado, Wyoming and that territory. I wonder if you concur in that statement, that there have been more mules and horses purchased in that territory in the past few years.

A. That territory, in my opinion, is where those Kansas City mules came from, but we bought more in Tennessee and Kentucky. That was the nearby points.

Mr. Greene: On account of the lower freight rates?

The Witness: Yes.

Mr. Martin: That is all.

By Mr. Burger:

Q. Mr. Fies, are there any purchasers of mules in this section of the country who would require the small, thin mules, but would want a larger, heavier mule?

A. I don't get you.

Q. I will state it this way. Do you find it to be the in- [fol. 2145] variable rule, when you sell your mules the parties purchasing them, will, in every instance, want a small, thin mule, rather than a large, heavy mule?

A. Ninety per cent.

Q. Ninety per cent?

A. That would be my guess, because a small, thin mule is the cheapest mule there is, and that is all anybody had any money to buy with, virtually.

Q. And that is the condition that has obtained the last three years?

A. Yes, since 1929.

Q. And do you have knowledge whether any other sellers of mules in this territory would have buyers for larger mules?

Mr. Greene: Just a moment. I didn't go into what other mule buyers did, and I object to his going into that.

Mr. Burger: But you must remember he qualified him as to economic conditions.

Exam. Griffin: Overruled.

Mr. Greene: Do you know of your own knowledge?

The Witness: The general demand has been for small, cotton mules?

Q. That is the way you find it?

A. Yes, sir.

Q. But probably some larger mules enter this territory?

A. What do you call this territory, Alabama?

[fol. 2146] Q. Well, I will say first Alabama, and then the South.

A. There might be some of the South I wouldn't know about; Mississippi and Georgia, I wouldn't know about.

Q. You wouldn't say throughout the South the demand the last two or three years was confined to the smaller, lighter weight mules?

A. In my opinion from my attendance on the markets, the majority would be cotton mules.

Q. Cotton mules?

A. Light, farm mules.

Q. You said that the larger mules were used in construction work?

A. Yes; lumber, construction work, mines and furnaces.

Q. Are you acquainted with the N. R. A. program to develop construction work throughout this territory, and particularly throughout the Tennessee Valley?

Mr. Greene: I think he is going a little far afield.

Q. You don't know anything about that?

A. I know there is such a movement, but I don't know what it is.

Q. There might be an increase in the future in the demand for larger mules?

A. Yes, there might be at any time.

Exam. Griffin: This is off the record.

(Discussion off the record.)

[fol. 2147] By Mr. Thompson:

Q. Mr. Fies, you haven't been buying any mules in Texas, have you?

A. No, not very many.

Q. Been confining yourself to other parts of the country?

A. Kansas City.

Q. Do you buy through agents, or how do you make purchases?

A. Some of us usually go to the markets, a member of the firm, Mr. Sparks, the manager at Montgomery, went a great deal. We now have a branch agency located in Kansas City.

Q. That looks after your purchases there?

A. Yes.

Q. You don't maintain an agency in Texas?

A. No.

Q. What is it that influences you as to where you make your purchases of mules; that is, one part of the country against the other?

A. Well, the price, the lowest price, the lowest expense of getting them in; that is the place we try to find.

Q. In other words, where you can buy them and get them delivered in Birmingham or Montgomery at the lowest price determines the place of your purchase?

A. Yes, but when that supply is not available, we have to go somewhere else.

Q. Somewhere else?

A. Yes.

[fol. 2148] Q. Have you been experiencing difficulty recently in finding an adequate supply of mules to meet your needs?

A. I would say there is developing a shortage of mules.

Q. And you find it more and more difficult to make purchases, do you?

A. Yes, when the active season begins, which is a little later, I think it will be more difficult to get them.

Q. Are you acquainted with a trader in Joplin, Missouri, named William Davis, a trader of horses and mules, know of him?

A. I don't believe I know of him.

Q. Speaking of the question of the value decrease, are you speaking that the value of mules, the same mules, is less now that it has been or do you mean you are buying a lower grade of mules and paying less than formerly?

A. I would say the demand for the smaller and cheaper grades have pulled down the higher grade mules along with them. It has made their sale less active and has lowered the price.

Q. Of the same class of animals?

A. Yes, in that way.

Q. You haven't been—you say you haven't been making any purchase or investigating the prices on the Fort Worth market for the last few years, have you?

A. No, sir.

Q. Well, there is a news item attributed to a trader in [fol. 2149] Joplin, Missouri, named Wilson Davis. He says he has been in business a good many years, a quarter of a century and the statement is made——

Mr. Greene: Are you putting this testimony in?

Mr. Thompson: I am reading it and want to ask the witness' opinion on it.

Q. The statement attributed to this gentleman is that the value of horses and mules has gone up 40 per cent. in the last six months, and——

A. This year?

Q. Yes, sir, 1933, and that there is a shortage of a million head this year and the demand is growing so rapidly it is almost impossible to meet it. Do you agree with that statement?

A. Not 40 per cent.

Q. Well, you do agree——

A. We shipped a carload of mules two weeks ago from East St. Louis in which, we will say, a $75. mule brought $80 to $85. That is about the——

Q. You mean in Birmingham?

A. No, at the market there. That was about the increase. Ten per cent. would cover it, as of 1932.

Q. This year compared with 1932?

A. 1933 with 1932.

Q. Do you think a ten per cent. increase in prices would [fol. 2150] be correct?

A. I would say a mule that cost $75, I bought for $85. I have those mules in mind and can specifically make the comparison. That would be around 10 per cent.

Q. About what weight mule is that?

A. That is an 850 pound mule.

Q. What would a mule like that sell for on the Birmingham-Montgomery market?

A. Well, an $85 mule, we would try to get $110, but we would sell him the best way we could. We can't keep them. They will not keep like goods on the shelf. They have got to move.

Q. Do your sales here at Birmingham and Montgomery come in competition with the sale of horses and mules made at Meridian, I would say?

A. Not at Meridian.

Q. Is your market limited to a nearby market around Montgomery and points like Birmingham?

A. Border points in Georgia and south of Montgomery, and I would say East Alabama, somewhat.

Mr. Greene: How about North Alabama, Mr. Fies?

The Witness: North Alabama, yes.

Q. Mr. Fies, would the shippers be interested in having these horses and mules weighed by the carriers at points of origin before they are shipped out?

A. I think that would be the best way it could be done. [fol. 2151] Then there wouldn't be any question.

Q. Well, now, where you sell in Birmingham and Montgomery, are they—you say points as far east as Georgia?

A. Border line. That would apply to Montgomery more than Birmingham.

Q. Would they go out in carload lots or sold by a few head or a single head at the time?

A. Used to be in carload lots.

Q. I am talking about the present.

A. Not any more. The freight is so high they can't ship them.

Q. That movement out, is that by rail or by truck or how?
A. By truck.
Mr. Thompson: That is all.

By Mr. Martin:

Q. In other words, when you sell your goods here at your markets at Birmingham and Montgomery, there is no further rail movement?
A. Well, sometimes.
Q. It is the rare experience?
A. Yes, I don't know whether I ought to say this or not. It doesn't pertain to this thing.

By Mr. Thompson:

Q. Your sales, I believe, are exclusively mules?
A. A few horses.
Q. Principally mules?
A. Yes. The demand for horses is about gone.
[fol. 2152] Q. The demand for mules is considerably greater than for horses?
A. Yes.
Q. They bring better prices?
A. Yes, they bring better prices; that is, the class we have been handling for the past few years.
Q. Do you handle any stock that brings prices in Birmingham and Montgomery as high as $150 or $160 a head?
A. Maybe a few once in a while.
Q. The reason I asked that, we had a hearing a few months ago on other complaints in which they testified they sold them as high as $160 on the Meridian market.
A. Meridian market?
Q. Yes.
A. They might have sold them for that on the credit: I don't think they did for cash.

Mr. Greene: Get most anything for them on the credit?
The Witness: Yes, sir.
Mr. Thompson: That is all I have.
Mr. Martin: I just want to be sure I understand Mr. Fies' answers to Mr. Thompson.

By Mr. Martin:

Q. If I understand your answer correctly, Mr. Fies, it is your testimony in your opinion the market value of horses

and mules at Montgomery and Birmingham, 1933 versus 1932, would show an increase, generally speaking of about [fol. 2153] 10 per cent. Is that——

A. That would be my judgment.

Mr. Martin: That is all.

The Witness: Whether that would hold good further on, I don't know, but at the present time, we were talking about.

Mr. Greene: Mr. Fies, do you know whether or not when you have an order for as many as twenty-five head at a point like Bainbridge, Georgia, would you ship those out in a railroad car in 1933—1932 and '33?

The Witness: If they were a full car.

Mr. Greene: That is all.

Exam. Griffin: Is that all? You are excused, Mr. Fies.

(Witness excused.)

(Here follow Exhibits "AM" and "AN", side folios 2154 to 2164, inclusive)

BUREAU OF STATISTICS

OPERATING REVENUES AND OPERATING EXPENSES OF CLASS I STEAM RAILWAYS IN THE UNITED STATES*

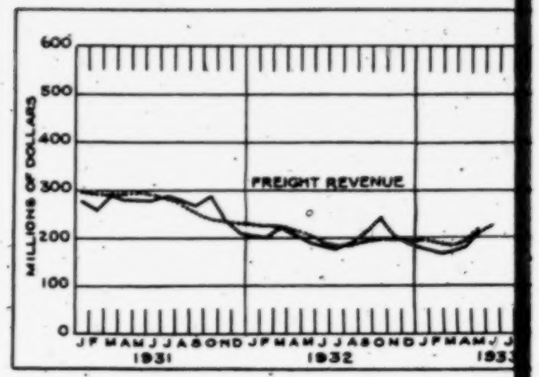
Compiled from 150 monthly reports of revenues and expenses representing 151 Class I steam railways

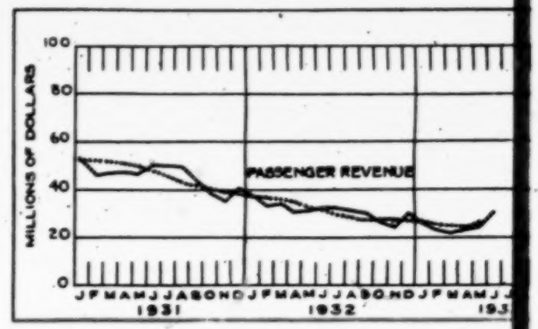
FOR SIX MONTHS ENDED WITH JUNE, 1933 AND 1932

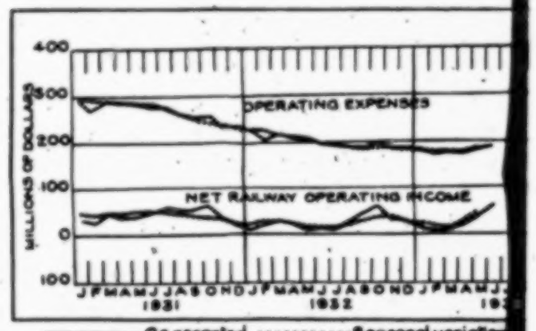
Item	United States		New England Region a/		Great Lakes Region		Central Eastern Region b/		Eastern District		Pocahontas Region	
	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932
Average number of miles operated	241,195.01	241,789.39	7,268.25	7,298.15	27,048.72	27,192.55	25,227.60	25,231.48	59,544.57	59,782.18	6,103.43	6,138.94
Revenues:												
Freight	$1,134,703,499	$1,326,286,192	$44,497,178	$51,957,223	$221,012,643	$242,721,239	$216,766,985	$245,636,543	$448,257,000	$520,326,005	$81,146,526	$78,637,231
Passenger	160,602,680	201,874,222	14,111,755	19,019,669	33,631,447	45,186,419	41,444,496	54,661,496	89,747,698	119,067,584	2,563,780	3,298,588
Mail	45,178,891	48,933,524	2,247,049	2,419,892	7,482,946	8,161,341	8,020,215	8,717,737	17,749,810	19,298,970	1,277,265	1,372,318
Express	22,801,772	29,584,521	1,224,727	1,646,870	4,433,386	6,174,684	3,801,261	5,321,618	9,492,378	13,183,192	674,474	748,577
All other transportation	33,341,460	40,790,895	2,543,310	3,317,118	11,187,822	13,625,970	5,695,781	6,822,295	10,386,913	13,809,883	1,089,469	1,345,676
Incidental	29,178,957	32,964,869	2,040,019	2,521,643	5,688,618	7,400,515	6,745,092	9,678,111	14,520,719	19,400,291	69,179	94,521
Joint facility—Cr	3,917,957	4,672,130	475,676	590,877	1,309,295	1,585,848	901,532	1,132,517	1,875,634	1,578,642	18,795	12,592
Joint facility—Dr	1,101,395	1,436,516	5,697	3,057	159,751	350,495	44,212	62,845	309,660	416,397		
Railway operating revenues	1,415,222,961	1,583,370,737	67,231,007	81,909,915	283,477,231	323,476,221	285,379,248	330,961,394	636,087,486	735,947,530	87,376,996	86,047,398
Expenses:												
Maintenance of way and structures	147,992,322	188,510,487	8,367,652	11,032,878	26,891,251	36,219,645	22,161,526	30,039,289	37,620,429	77,991,407	9,327,527	9,873,301
Maintenance of equipment	278,762,548	389,919,145	10,720,339	12,993,863	58,851,882	69,628,863	53,208,648	64,677,966	122,810,808	148,900,698	14,444,728	14,616,826
Traffic	42,672,896	51,176,819	1,094,766	1,512,176	7,756,528	9,477,604	8,915,000	8,997,518	15,728,318	19,787,898	1,752,588	1,825,574
Transportation	518,636,873	608,727,125	25,572,809	29,162,198	109,178,980	128,279,611	103,058,427	125,580,718	239,758,582	282,422,081	20,761,277	22,865,242
Miscellaneous operations	10,857,947	14,598,067	344,996	488,880	1,727,949	2,127,267	1,496,614	1,847,267	5,496,860	7,526,836	218,167	318,376
General	71,883,995	81,703,282	3,067,318	3,371,503	13,427,876	15,533,493	14,188,750	16,871,805	30,883,940	35,778,649	3,304,958	3,713,571
Transportation for investment—Cr	1,427,089	2,149,274	1,961	18,961	132,111	208,098	434,162	517,165	568,834	742,224	39,626	38,660
Railway operating expenses	1,068,940,604	1,266,884,646	49,594,897	59,006,679	218,182,402	262,061,107	203,592,804	254,096,887	471,770,103	575,164,673	51,852,737	54,148,887
Net revenue from railway operations	346,282,357	316,486,089	17,636,110	22,903,236	65,294,829	61,415,114	81,786,444	76,864,507	164,317,383	160,782,857	35,523,259	31,898,511
Railway tax accruals	133,659,799	146,136,990	4,758,628	5,635,632	26,143,385	28,944,671	24,231,577	24,985,678	95,135,568	99,250,941	9,286,163	9,359,626
Uncollectible railway revenues	484,880	471,558	32,946	5,038	98,909	116,507	71,835	54,191	197,690	175,736	8,567	11,948
Railway operating income	212,138,718	169,876,001	12,844,538	17,062,566	39,058,535	32,353,936	57,081,032	51,824,638	108,984,105	101,241,180	26,230,099	22,493,956
Equipment rents—Dr. balance	41,318,547	43,006,463	2,278,975	2,475,285	10,356,967	11,229,523	7,831,176	7,737,986	20,467,118	21,443,494	776,434	869,963
Joint facility rent—Dr. balance	17,786,957	17,858,700	2,349,115	2,582,241	3,887,739	3,852,836	3,260,916	3,841,360	9,497,770	9,215,877	145,901	735,870
Net railway operating income	152,903,214	109,612,838	8,216,448	12,004,300	24,813,829	17,272,177	45,988,940	41,245,292	79,019,217	70,581,769	25,262,632	22,628,047
Ratio of expenses to revenues (per cent)	75.53	80.01	73.77	72.39	76.97	81.01	71.38	76.78	74.17	78.15	59.34	62.93

Item	Southern Region		Southern District		Northwestern Region		Central Western Region		Southwestern Region		Western District	
	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932
Average number of miles operated	39,751.56	40,051.33	45,858.99	46,190.27	48,788.99	48,769.57	53,987.11	53,859.61	33,079.35	33,187.76	135,795.45	135,816.94
Revenues:												
Freight	$157,639,800	$199,358,976	$216,788,326	$217,992,307	$125,695,172	$131,148,678	$168,109,738	$206,180,043	$100,930,876	$106,908,228	$411,556,133	$444,807,680
Passenger	27,644,380	37,557,808	14,111,755	19,019,669	13,042,578	17,885,344	5,693,084	7,803,827	1,650,347	2,453,004	25,252,884	33,737,947
Mail	8,543,887	9,353,308	2,247,049	2,419,892	2,888,189	3,121,449	1,083,972	1,172,000	1,748,816	1,903,968	11,741,844	12,886,232
Express	3,854,128	5,383,133	1,224,727	1,646,870	1,921,062	2,537,814	1,633,873	2,222,737	1,292,217	1,776,268	10,701,368	15,040,277
All other transportation	5,735,252	7,180,762	2,543,310	3,317,118	2,281,048	2,943,203	1,583,074	1,844,826	1,178,882	1,502,588	15,344,244	19,021,355
Incidental	7,723,678	8,808,812	2,040,019	2,521,643	2,781,588	3,241,208	1,583,074	1,844,826	1,178,882	1,502,588	15,344,244	19,021,355
Joint facility—Cr	93,909	96,675	106,990	111,367	184,149	194,158	952,660	675,789	9,836	10,811	2,944,000	3,004,998
Joint facility—Dr												
Railway operating revenues	190,437,177	196,771,801	277,793,773	288,616,599	155,238,188	163,233,286	227,908,888	267,211,825	138,178,630	133,179,897	501,341,708	562,609,698
Expenses:												
Maintenance of way and structures	23,806,688	28,186,603	30,634,815	37,222,308	16,870,855	26,778,252	29,211,841	36,196,479	15,903,056	17,083,936	88,888,784	77,612,178
Maintenance of equipment	35,933,547	48,233,880	46,654,353	61,153,203	37,262,880	47,888,822	34,844,888	44,234,844	21,138,926	24,888,196	142,888,888	171,888,888
Traffic	5,888,888	7,888,188	8,888,888	9,888,888	6,888,888	8,888,888	8,888,888	10,888,888	4,888,888	5,888,888	15,888,888	18,888,888
Transportation	67,888,888	74,888,888	88,888,888	98,888,888	78,888,888	88,888,888	100,888,888	128,888,888	64,888,888	74,888,888	198,888,888	228,888,888
Miscellaneous operations	1,888,888	2,888,888	1,888,888	2,888,888	888,888	1,888,888	888,888	1,888,888	888,888	1,888,888	2,888,888	3,888,888
General	8,888,888	10,888,888	12,888,888	14,888,888	8,888,888	9,888,888	13,888,888	14,888,888	7,888,888	8,888,888	28,888,888	31,888,888
Transportation for investment—Cr	188,888	184,888	188,888	188,888	175,888	189,888	187,888	188,888	888,888	878,888	1,888,888	1,888,888
Railway operating expenses	148,319,588	167,719,788	194,178,686	221,868,671	130,168,837	158,587,648	179,838,358	212,168,518	93,990,028	105,095,103	488,997,815	469,851,308
Net revenue from railway operations	48,087,888	31,888,888	83,888,888	87,888,888	85,888,788	11,888,888	48,888,888	88,888,888	45,888,888	88,888,888	88,888,888	88,888,888
Railway tax accruals	18,888,888	18,888,888	88,888,888	87,888,888	17,888,888	19,888,888	88,888,888	88,888,888	8,888,888	10,888,888	88,888,888	88,888,888
Uncollectible railway revenues	53,888	88,888	81,888	87,888	88,888	78,888	88,888	78,888	88,888	75,888	888,888	888,888
Railway operating income	31,788,888	12,888,888	87,888,888	88,888,888	7,888,888	4 7,888,888	88,888,888	88,888,888	18,888,888	15,888,888	88,888,888	88,888,888
Equipment rents—Dr. balance	8,888,888	8,888,888	1,888,888	1,888,888	8,888,888	8,888,888	8,888,888	7,888,888	8,888,888	8,888,888	18,888,888	18,888,888
Joint facility rent—Dr. balance	1,888,888	1,888,888	1,888,888	1,888,888	1,888,888	1,888,888	8,888,888	8,888,888	1,888,888	1,888,888	8,888,888	8,888,888
Net railway operating income	88,888,888	7,888,888	88,888,888	88,888,888	1,888,888	4 18,888,888	18,888,888	18,888,888	8,888,888	8,888,888	88,888,888	88,888,888
Ratio of expenses to revenues (per cent)	78.78	88.38	88.88	77.88	88.88	98.98	78.88	79.48	78.78	88.38	88.38	88.58

* Excludes switching and terminal companies. Statements prior to January, 1933, included switching and terminal companies.
a/ Does not include Boston & Albany, the revenues and expenses of which are included with New York Central returns in Great Lakes Region.
b/ Does not include Big Four Lines, the revenues and expenses of which are included with New York Central returns in Great Lakes Region.
4/ Includes $7,276,379 sleeping and parlor car surcharge.







(EXHIBIT AM)

Statement No. M-100
JUNE, 1933

D STATES*

Eastern District		Pocahontas Region	
1933	1932	1933	1932
59,544.57	59,722.18	6,103.43	6,138.94
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

Subject to revision

(EXHIBIT AM)

INTERSTATE COMMERCE COMMISSION

BUREAU OF STATISTICS

OPERATING REVENUES AND OPERATING EXPENSES OF CLASS I STEAM RAILWAYS IN THE UNITED STATES*

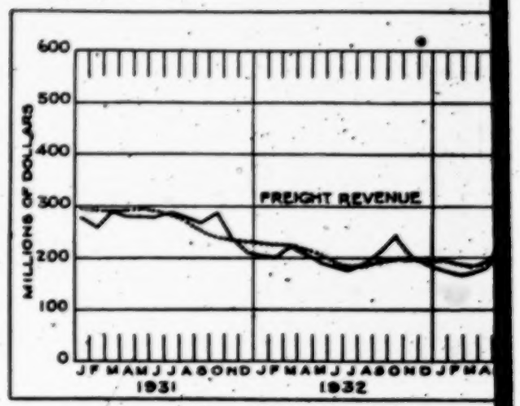
Compiled from 149 monthly reports of revenues and expenses representing 150 Class I steam railways

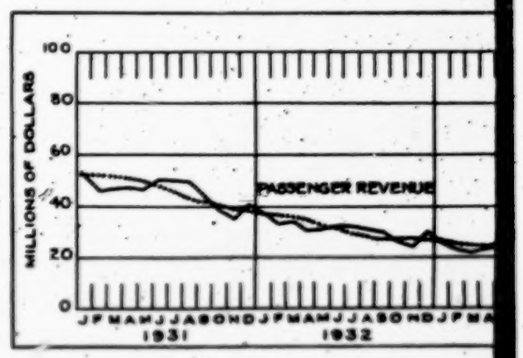
FOR TWELVE MONTHS ENDED WITH DECEMBER, 1933 AND 1932

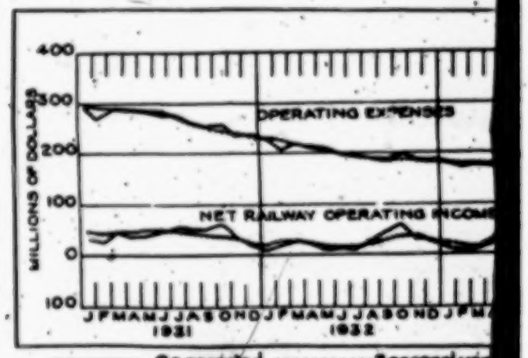
Item	United States		New England Region a/		Great Lakes Region		Central Eastern Region b/		Eastern District		Pocahontas Region	
	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932
Average number of miles operated	240,743.93	241,678.59	7,229.21	7,286.18	27,002.44	27,197.31	25,223.32	25,225.86	59,459.97	59,709.35	6,098.88	6,133.26
Revenues:												
Freight	$2,448,775,344	$2,550,257,028	$231,121,265	$236,212,858	$477,306,280	$473,862,185	$421,232,539	$473,265,312	$1,062,870,352	$1,136,140,228	$141,244,332	$166,617,712
Passenger	377,561,853	377,045,773	34,481,247	35,851,746	74,777,248	74,733,157	24,749,248	101,365,216	137,886,496	125,136,128	3,268,647	8,276,823
Mail	91,870,465	97,151,711	4,279,845	4,876,519	15,174,052	16,278,682	16,173,815	17,298,023	10,243,216	10,741,185	1,547,852	1,657,183
Express	57,503,248	63,283,308	2,711,222	3,096,788	9,189,235	11,086,636	7,970,748	9,222,810	10,861,888	11,741,185	1,435,185	1,680,188
All other transportation	71,882,888	78,045,888	3,036,842	3,269,878	28,189,958	26,115,885	12,323,362	12,514,888	19,531,680	21,741,185	1,435,185	1,680,188
Incidental	57,762,944	61,301,088	4,302,188	4,737,486	12,921,619	14,076,418	14,880,213	17,781,169	21,265,152	24,741,185	2,651,185	2,880,188
Joint facility—Cr	8,550,080	8,872,142	955,178	1,091,208	680,987	686,280	1,128,302	1,169,986	2,712,952	2,741,185	826,185	857,188
Joint facility—Dr	2,861,605	2,882,787	11,847	8,174	697,569	619,199	109,958	100,689	618,594	728,162	21,196	27,053
Railway operating revenues	3,095,446,190	3,126,889,091	140,109,285	152,775,852	618,889,118	627,172,122	496,598,765	636,858,679	1,389,133,168	1,416,800,653	154,551,862	180,686,999
Expenses:												
Maintenance of way and structures	422,178,088	351,280,252	17,383,383	20,151,733	59,618,286	65,783,832	52,489,827	51,614,840	139,488,126	137,730,036	12,155,858	14,522,898
Maintenance of equipment	588,768,449	611,241,845	21,887,313	27,871,612	134,206,803	134,723,937	130,180,384	135,237,628	276,674,588	285,276,785	24,955,858	31,521,072
Traffic	85,838,807	94,230,852	3,141,838	3,581,101	15,677,858	17,686,088	14,215,602	16,413,576	32,033,102	34,826,788	3,355,858	4,135,858
Transportation	1,078,005,328	1,157,889,365	52,886,881	56,567,268	226,446,858	245,371,046	222,617,610	239,764,913	361,676,888	379,788,888	43,355,858	45,371,858
Miscellaneous operations	23,984,888	27,185,038	1,461,888	1,708,073	5,028,038	5,785,730	5,702,106	6,339,888	11,888,888	12,888,888	1,355,858	1,555,858
General	141,858,888	138,272,858	6,073,888	6,511,888	27,032,888	28,926,888	29,158,188	31,581,888	62,888,888	67,888,888	6,555,888	7,888,888
Transportation for investment—Cr	1,949,263	3,984,639	7,512	39,698	358,364	480,662	848,987	1,081,738	1,013,803	1,488,888	77,680	96,863
Railway operating expenses	2,889,318,750	2,903,543,795	102,366,870	111,453,882	460,847,322	495,780,089	443,389,881	469,321,628	1,006,585,633	1,076,558,999	108,516,833	105,811,603
Net revenue from railway operations	206,127,440	723,345,296	37,740,415	41,322,570	153,581,796	131,392,033	193,265,384	167,531,051	388,547,535	340,241,654	46,035,029	73,215,396
Railway tax accruals	849,339,965	875,171,880	3,178,283	10,035,873	67,992,879	56,644,824	48,288,815	54,783,441	104,448,847	112,857,346	12,950,222	12,580,441
Uncollectible railway revenues	1,858,372	1,027,418	50,856	37,954	858,432	827,989	800,735	171,991	580,001	637,514	82,685	32,085
Railway operating income	595,379,103	447,146,018	28,511,086	31,249,163	108,857,685	77,115,588	144,835,976	114,575,999	277,604,687	222,940,750	67,061,881	56,662,870
Equipment rents—Dr. balance	85,089,433	65,162,856	4,639,306	4,995,973	22,679,351	22,257,896	16,718,861	16,628,410	44,033,338	43,811,688	4,666,188	4,384,852
Joint facility rent—Dr. balance	35,960,258	35,665,226	4,878,944	5,199,767	8,117,151	8,445,676	8,811,833	6,167,811	19,867,588	19,813,898	1,599,857	1,587,805
Net railway operating income	474,369,438	326,317,936	18,992,776	21,503,423	73,461,183	46,412,667	121,309,282	91,779,778	213,763,861	159,695,864	68,133,366	57,423,718
Ratio of expenses to revenues (per cent)	72.67	76.87	73.06	72.95	75.25	79.05	69.68	73.69	78.46	75.98	55.78	58.36

Item	Southern Region		Southern District		Northwestern Region		Central Western Region		Southwestern Region		Western District	
	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932
Average number of miles operated	39,627.59	39,919.23	45,719.81	46,052.47	48,722.45	48,805.54	53,820.05	53,913.26	33,086.65	33,191.97	135,569.15	135,910.77
Revenues:												
Freight	$388,089,648	$397,395,688	$503,773,133	$513,963,810	$309,885,836	$280,301,106	$413,188,638	$433,186,967	$214,218,688	$217,805,821	$987,173,758	$930,893,186
Passenger	33,155,888	33,662,888	34,787,888	35,882,888	22,888,888	23,888,888	22,888,888	23,888,888	8,888,888	8,888,888	88,888,888	88,888,888
Mail	11,288,573	11,760,514	14,187,060	14,357,555	12,384,806	12,888,888	8,888,888	8,888,888	3,888,888	3,888,888	17,888,888	17,888,888
Express	7,888,888	8,770,742	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	17,888,888	17,888,888
All other transportation	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	17,888,888	17,888,888
Incidental	5,888,888	5,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	17,888,888	17,888,888
Joint facility—Cr	1,888,888	1,888,888	1,888,888	1,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	1,888,888	1,888,888
Joint facility—Dr	888,888	888,888	888,888	888,888	888,888	888,888	8,888,888	8,888,888	8,888,888	8,888,888	1,888,888	1,888,888
Railway operating revenues	388,514,753	377,781,835	583,063,815	558,806,838	361,286,282	388,912,579	512,335,837	546,678,907	869,688,188	860,898,918	1,123,889,807	1,151,660,088
Expenses:												
Maintenance of way and structures	43,906,978	50,279,878	63,868,338	68,338,887	42,138,888	50,878,888	38,888,888	38,881,888	21,818,888	21,188,888	128,888,888	128,888,888
Maintenance of equipment	71,888,888	81,888,888	112,888,888	118,888,888	68,888,888	72,888,888	88,888,888	104,888,888	48,888,888	48,888,888	288,888,888	288,888,888
Traffic	11,888,888	12,888,888	18,888,888	18,888,888	18,888,888	18,888,888	18,888,888	18,888,888	18,888,888	18,888,888	88,888,888	88,888,888
Transportation	137,888,888	144,888,888	188,888,888	188,888,888	178,888,888	188,888,888	188,888,888	198,888,888	88,888,888	88,888,888	588,888,888	588,888,888
Miscellaneous operations	1,888,888	2,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888
General	17,888,888	19,888,888	28,888,888	28,888,888	17,888,888	18,888,888	28,888,888	28,888,888	18,888,888	18,888,888	88,888,888	88,888,888
Transportation for investment—Cr	888,888	888,888	888,888	888,888	888,888	888,888	888,888	888,888	888,888	888,888	8,888,888	8,888,888
Railway operating expenses	291,888,888	318,888,888	399,888,888	417,888,888	373,888,888	396,888,888	388,888,888	410,888,888	188,888,888	208,888,888	883,888,888	888,888,888
Net revenue from railway operations	97,888,888	68,888,888	183,888,888	140,888,888	88,888,888	88,888,888	128,888,888	136,888,888	88,888,888	88,888,888	288,888,888	288,888,888
Railway tax accruals	88,888,888	31,888,888	67,888,888	58,888,888	33,888,888	38,888,888	47,888,888	58,888,888	17,888,888	18,888,888	91,888,888	107,888,888
Uncollectible railway revenues	888,888	888,888	888,888	888,888	888,888	888,888	888,888	888,888	888,888	888,888	888,888	888,888
Railway operating income	68,888,888	33,888,888	135,888,888	88,888,888	58,888,888	88,888,888	88,888,888	88,888,888	88,888,888	88,888,888	188,888,888	188,888,888
Equipment rents—Dr. balance	6,888,888	6,888,888	8,888,888	8,888,888	8,888,888	8,888,888	18,888,888	16,888,888	11,888,888	12,888,888	38,888,888	38,888,888
Joint facility rent—Dr. balance	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	8,888,888	18,888,888	18,888,888
Net railway operating income	58,888,888	25,888,888	128,888,888	88,888,888	48,888,888	88,888,888	88,888,888	88,888,888	88,888,888	88,888,888	138,888,888	88,888,888
Ratio of expenses to revenues (per cent)	75.08	82.69	68.58	78.82	75.68	86.01	73.65	75.03	77.08	77.81	75.05	78.95

* Excludes switching and terminal companies. Statements prior to January, 1933, included switching and terminal companies.
a/ Does not include Boston & Albany, the revenues and expenses of which are included with New York Central returns in Great Lakes Region.
b/ Does not include Big Four Lines, the revenues and expenses of which are included with New York Central returns in Great Lakes Region.
c/ Includes $15,276,803 sleeping and parlor car surcharge.
d/ Deficit or other reverse item.





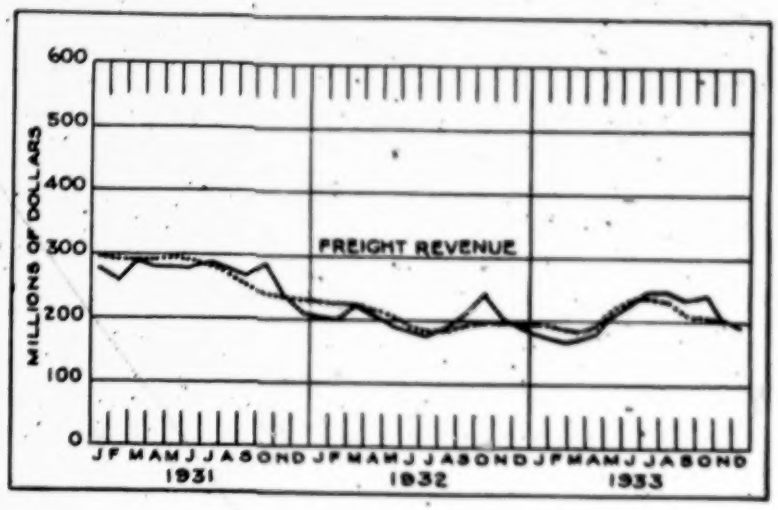


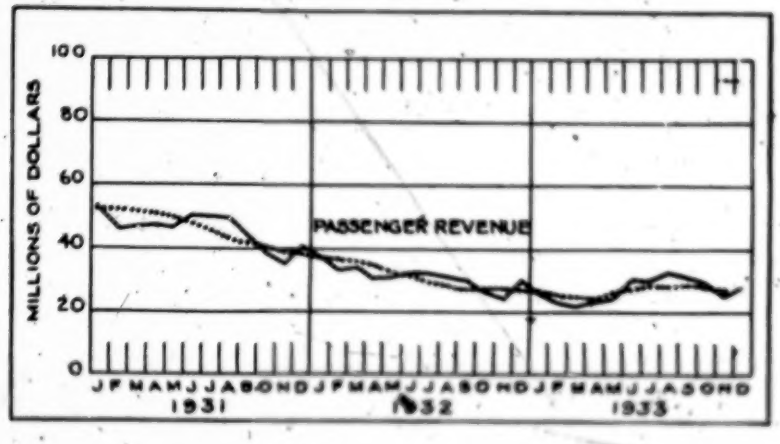
STATES

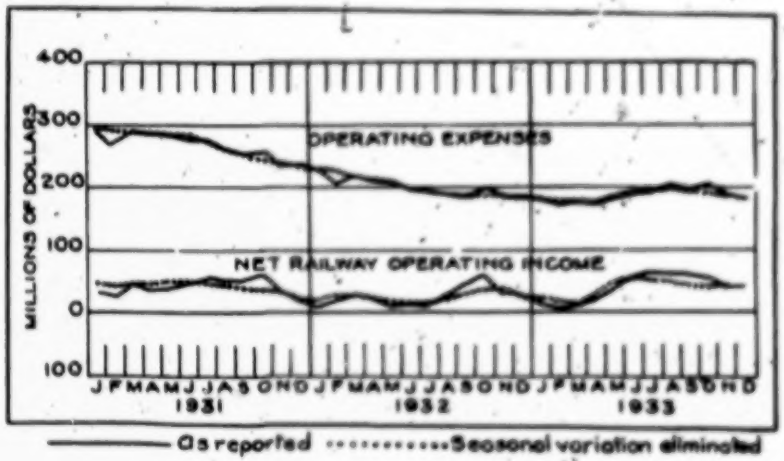
Eastern District		Pocahontas Region	
933	1932	1933	1932
9,454.97	59,709.35	6,092.22	6,133.24
,220,322	$1,026,140,528	$181,246,435	$166,617,718
,428,694	225,130,185	2,552,242	2,216,013
,389,516	38,482,296	2,662,447	2,617,149
,467,828	37,582,554	1,977,863	1,880,158
,578,480	44,781,605	1,439,296	1,428,166
,965,152	36,273,368	2,621,229	2,590,189
,718,853	2,683,471	214,681	184,379
618,554	728,162	21,154	87,033
,133,168	1,416,800,653	194,551,462	180,686,999
,428,126	139,710,036	19,155,198	18,699,852
,674,584	280,874,904	35,645,852	31,684,017
,033,102	36,635,235	3,584,403	3,519,774
,470,895	599,764,888	45,861,564	43,577,846
,885,742	11,756,556	483,088	472,401
,265,087	27,388,098	6,524,900	7,085,051
,013,205	1,482,092	77,180	96,863
,585,633	1,076,558,999	108,516,433	105,411,603
,247,535	350,845,624	86,035,089	75,215,396
,428,867	116,867,360	18,960,228	18,580,441
580,001	437,514	82,689	32,085
,604,687	222,940,750	67,061,891	56,662,870
,033,518	43,431,688	$ 2,666,188	$ 2,388,852
,607,588	19,813,894	1,998,657	1,967,695
,763,841	159,695,868	68,133,366	57,483,714
78.46	75.98	55.78	56.36

Southwestern Region		Western District	
1933	1932	1933	1932
53,086.65	33,191.97	135,569.15	135,910.77
,218,682	$217,405,851	$987,171,758	$930,853,188
,276,229	18,143,749	93,082,141	109,184,858
,217,597	8,436,194	62,153,870	68,351,852
,471,844	4,537,673	17,081,262	21,489,786
,587,491	7,178,106	85,764,793	84,257,405
,687,148	5,813,811	17,331,680	18,868,111
593,793	610,889	3,880,603	4,378,318
19,185	88,718	1,418,795	1,709,806
,628,128	860,092,918	1,183,899,807	1,151,680,004
,616,408	33,173,862	129,884,548	148,271,299
,168,088	48,038,378	815,168,653	225,893,916
,240,156	11,379,880	37,280,891	41,864,405
,687,402	93,609,484	394,681,019	429,369,881
,298,520	1,651,289	9,005,084	10,764,848
,695,422	15,240,233	57,073,080	62,462,110
607,110	603,584	1,589,508	8,159,880
,417,840	202,389,898	843,082,504	909,197,366
,210,688	57,703,488	280,227,303	282,482,638
,429,761	18,103,589	97,861,864	107,999,139
190,397	141,736	585,114	608,593
,590,730	38,758,099	181,839,320	138,078,706
,083,832	12,388,072	36,782,332	38,906,803
,940,277	3,512,549	12,852,184	12,172,394
,966,681	23,057,458	132,799,804	83,395,507
77.08	77.81	75.05	78.95

companies.
in Great Lakes Region.
s,Great Lakes Region.







102210-O U.S. GOVERNMENT PRINTING OFFICE 1934

Subject to revision

INTERSTATE COMMERCE COMMISSION

BUREAU OF STATISTICS

(EXHIBIT AM)

REVENUE TRAFFIC STATISTICS OF CLASS I STEAM RAILWAYS IN THE UNITED STATES

INCLUDING MIXED-TRAIN SERVICE

Compiled from 140 reports (Form OS-D) representing 153 steam railways. Switching and terminal companies not included

REVENUE FREIGHT TRAFFIC

FOR THE MONTH OF DECEMBER, 1933 AND 1932

Average miles of road operated		Revenue tons carried (thousands)		Revenue tons carried one mile (thousands)		Freight revenue		Miles per revenue ton per road		Revenue per ton-mile		Revenue per ton per road		District and region
1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933 (Cents)	1932 (Cents)	1933	1932	
7,231	7,221	4,295	4,207	509,093	503,971	$7,869,878	$8,216,933	119.91	119.79	1.546	1.631	$1.834	$1.954	Eastern District
24,440	24,422	23,284	23,573	1,441,574	1,548,486	34,893,803	37,637,730	149.28	147.29	.936	.969	1.499	1.603	New England Region a/
24,435	24,469	24,934	25,448	4,110,578	3,940,051	57,538,089	54,985,840	164.95	167.75	.913	.959	1.505	1.575	Great Lakes Region
														Central Eastern Region b/
56,826	56,912	52,863	53,168	6,561,240	6,370,708	88,301,800	87,842,501	163.18	163.59	.961	.990	1.569	1.619	Total, Eastern District
5,969	6,083	7,943	8,953	2,811,936	2,366,651	22,772,505	19,847,089	376.74	379.23	.622	.605	1.734	1.690	Southern District:
39,347	39,591	11,998	12,653	2,932,659	2,443,560	25,555,073	24,789,812	248.76	252.73	1.050	1.014	2.130	2.056	Pocahontas Region
														Southern Region
85,316	85,634	19,941	20,607	4,646,775	4,832,211	39,325,578	39,242,661	233.02	234.49	.846	.812	1.972	1.904	Total, Southern District
														Western District:
48,183	48,474	8,903	7,758	2,036,347	1,842,113	21,289,993	20,010,488	242.33	238.05	1.046	1.086	2.533	2.586	Northwestern Region
33,188	33,280	11,533	10,122	3,082,019	2,628,892	31,978,709	29,633,443	296.85	289.85	1.045	1.104	2.778	2.928	Central Western Region
33,288	33,580	7,469	7,033	1,836,704	1,489,185	18,748,518	16,355,159	218.86	211.75	1.025	1.097	2.533	2.523	Southwestern Region
134,597	135,584	27,435	24,893	6,739,070	6,016,101	70,026,214	65,977,024	245.64	241.68	1.039	1.097	2.552	2.650	Total, Western District
238,339	240,130	99,839	96,668	19,947,085	19,219,080	191,833,592	188,062,206	199.79	196.81	.961	.979	1.919	1.945	United States

FOR TWELVE MONTHS ENDED WITH DECEMBER, 1933 AND 1932

Average miles of road operated		Revenue tons carried (thousands)		Revenue tons carried one mile (thousands)		Freight revenue		Miles per revenue ton per road		Revenue per ton-mile		Revenue per ton per road		District and region
1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933 (Cents)	1932 (Cents)	1933	1932	
7,579	7,632	50,539	50,778	6,167,789	6,139,121	$108,185,151	$106,651,728	122.04	120.90	1.754	1.737	$2.141	$2.100	Eastern District
24,517	24,555	283,701	269,444	47,320,770	45,503,078	670,164,948	640,680,866	166.80	165.98	1.416	1.408	2.362	2.379	New England Region a/
24,802	24,677	112,490	282,083	53,182,544	47,211,049	691,640,175	675,516,176	169.80	167.37	.921	1.431	1.564	1.602	Great Lakes Region
														Central Eastern Region b/
58,718	58,944	647,090	602,185	104,700,343	98,753,248	1,469,990,888	1,446,088,998	161.80	160.00	1.404	1.464	2.271	2.343	Total, Eastern District
6,020	6,072	105,093	93,649	16,693,142	16,238,446	181,948,926	166,617,713	173.06	180.78	.897	.827	1.551	1.495	Southern District:
39,452	39,752	148,196	137,448	30,040,824	28,218,227	322,027,397	307,345,898	202.72	205.56	1.072	1.089	2.172	2.239	Pocahontas Region
														Southern Region
45,474	45,824	253,289	231,112	58,934,186	54,476,713	503,975,833	473,963,609	232.72	235.78	.898	.858	2.088	2.062	Total, Southern District
														Western District:
48,366	48,467	127,988	104,189	27,970,390	24,603,616	300,798,965	280,281,120	219.15	236.16	1.075	1.139	2.355	2.690	Northwestern Region
33,451	33,588	131,517	132,770	37,848,778	37,253,618	409,188,998	421,188,982	388.28	381.34	1.081	1.131	4.199	4.312	Central Western Region
35,372	35,957	90,139	84,147	20,325,451	19,177,604	214,008,580	218,870,348	225.49	217.31	1.053	1.141	2.374	2.601	Southwestern Region
135,189	135,413	349,080	325,801	86,144,619	81,134,838	924,129,942	921,758,833	246.80	249.49	1.073	1.138	2.648	2.839	Total, Western District
239,381	240,381	1,249,373	1,158,458	249,779,148	234,368,395	2,897,336,663	2,838,750,800	199.92	208.31	.997	1.009	1.992	2.102	United States

REVENUE PASSENGER TRAFFIC

Average miles of road operated		Revenue passengers carried (thousands)		Revenue passengers carried one mile (thousands)		Passenger revenue		Miles per passenger per road		Revenue per passenger-mile		Revenue passengers per car		District and region
1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933 (Cents)	1932 (Cents)	1933	1932	
6,895	6,928	1,966	1,973	139,819	139,819	$3,326,695	$3,525,374	29.08	27.06	2.378	2.524	19.49	17.75	Eastern District
21,913	22,007	7,722	7,748	1,341,573	1,368,486	31,850,483	34,911,730	173.60	173.80	2.375	2.552	12.20	10.72	New England Region a/
18,947	19,308	15,424	15,826	3,109,193	3,178,801	47,996,795	47,746,771	201.62	203.88	2.014	2.084	12.65	12.15	Great Lakes Region
														Central Eastern Region b/
47,085	48,731	25,079	25,289	6,589,295	6,786,889	17,969,911	17,834,740	30.10	27.80	2.125	2.268	13.26	12.24	Total, Eastern District
2,172	2,688	220	274	57,325	17,908	339,670	306,106	63.11	76.78	2.314	2.814	7.11	5.61	Southern District:
37,392	37,799	3,570	2,792	4,110,578	3,940,051	3,150,943	3,166,557	50.17	46.57	1.748	2.446	8.95	8.64	Pocahontas Region
														Southern Region
42,867	43,681	3,890	3,066	208,436	147,470	3,670,553	3,672,663	52.56	48.73	1.813	2.490	8.69	6.50	Total, Southern District
														Western District:
43,019	43,878	2,032	1,998	133,607	127,078	2,188,173	2,427,766	65.74	61.80	1.637	1.973	9.36	8.80	Northwestern Region
28,316	28,518	6,179	5,890	242,356	245,588	4,599,746	4,728,149	58.01	63.40	1.897	1.942	9.35	9.09	Central Western Region
31,744	32,099	948	578	67,401	60,073	1,891,891	1,931,470	125.15	138.44	1.963	1.913	8.80	7.56	Southwestern Region
124,081	126,495	9,759	6,466	443,364	446,580	7,673,409	6,687,585	69.02	69.71	1.730	1.965	8.80	8.64	Total, Western District
214,033	218,867	38,688	37,771	1,491,225	1,380,470	29,306,873	30,159,988	38.54	36.80	1.965	2.187	10.85	9.96	United States

Average miles of road operated		Revenue passengers carried (thousands)		Revenue passengers carried one mile (thousands)		Passenger revenue		Miles per passenger per road		Revenue per passenger-mile		Revenue passengers per car		District and region
1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933 (Cents)	1932 (Cents)	1933	1932	
7,377	7,483	22,314	24,208	2,766,099	2,731,288	$57,860,170	$59,044,170	14.56	14.23	2.091	2.162	18.86	17.72	Eastern District
5,158	5,228	17,457	17,178	1,139,966	1,242,923	27,147,136	27,146,586	11.78	11.67	2.382	2.184	12.73	12.57	New England Region a/
8,207	8,549	136,322	157,054	1,486,885	1,571,881	23,570,975	24,140,960	18.19	17.82	1.585	1.536	10.91	10.47	Great Lakes Region
														Central Eastern Region b/
17,372	18,700	880,843	899,407	3,136,915	3,871,782	16.13	16.01	52.77	50.79	1.119	1.053	2.624	2.990	Total, Eastern District
														Southern District:
14	10	134	127	1,575	1,091	2.89	12.73	86.85	79.46	1.171	1.854	2.180	2.826	Pocahontas Region
1,506	1,489	15,656	17,363	189,417	217,913	10.24	10.50	79.99	101.61	1.148	1.253	1.796	2.631	Southern Region
1,520	1,499	15,790	17,490	190,991	219,661	10.86	10.33	80.78	97.87	1.147	1.253	1.801	2.656	Total, Southern District
														Western District:
1,147	1,203	17,765	19,480	190,672	222,567	15.47	15.33	121.43	144.70	1.073	1.131	1.710	2.131	Northwestern Region
2,041	2,082	34,733	39,132	302,537	388,251	8.71	9.91	87.12	99.26	.972	.976	1.806	2.077	Central Western Region
32	42	338	324	3,281	3,333	9.69	8.88	130.13	140.48	1.043	1.570	1.917	1.915	Southwestern Region
3,220	3,327	52,836	58,936	496,490	614,151	16.41	17.71	154.10	184.60	.969	.976	1.806	2.077	Total, Western District
3,895	3,995	90,435	98,809	908,770	917,891	13.91	14.01	186.52	139.16	.949	1.040	1.826	2.052	United States
22,547	23,052	986,470	986,766	3,896,676	4,009,514	15.37	15.31	70.96	73.63	1.106	1.093	2.226	2.563	

a/ Includes Boston & Albany (leased to New York Central), for which operating statistics are reported separately.
b/ Does not include Big Four Lines, the revenue traffic statistics of which are included with New York Central lines.

Commutation traffic included above						Miles per passenger per road				Revenue per passenger-mile				District and region
Revenue passengers carried (thousands)		Revenue passengers carried one mile (thousands)		Passenger revenue		Commutation		Other than commutation		Commutation		Other than commutation		
1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933 (Cents)	1932 (Cents)	1933 (Cents)	1932 (Cents)	
1,977	2,083	22,314	24,208	$766,099	$731,288	11.60	11.62	98.32	97.72	3.434	3.021	1.884	1.877	Eastern District
1,158	1,228	17,457	17,178	339,966	342,923	17.67	17.28	85.85	85.44	1.948	1.808	2.634	2.595	New England Region a/
2,207	2,549	136,322	157,054	1,486,885	1,571,881	15.48	15.43	38.12	37.84	1.090	1.085	2.560	2.745	Great Lakes Region
														Central Eastern Region b/
17,372	18,700	880,843	899,407	3,136,915	3,871,782	16.13	16.01	52.77	50.79	1.119	1.053	2.624	2.990	Total, Eastern District
														Southern District:
14	10	134	127	1,575	1,091	2.89	12.73	86.85	79.46	1.171	1.854	2.180	2.826	Pocahontas Region
1,506	1,489	15,656	17,363	189,417	217,913	10.24	10.50	79.99	101.61	1.148	1.253	1.796	2.631	Southern Region
1,520	1,499	15,790	17,490	186,991	219,661	10.86	10.33	80.78	97.87	1.147	1.253	1.801	2.656	Total, Southern District
														Western District:
1,147	1,203	17,765	19,480	190,672	222,567	15.47	15.33	121.43	144.70	1.073	1.131	1.710	2.131	Northwestern Region
2,041	2,082	34,733	39,132	302,537	388,251	8.71	9.91	87.12	99.26	.972	.976	1.806	2.077	Central Western Region
32	42	338	324	3,281	3,333	9.69	8.88	130.13	140.48	1.043	1.570	1.917	1.915	Southwestern Region
3,220	3,327	52,836	58,936	496,490	614,151	16.41	17.71	154.10	184.60	.969	.976	1.806	2.077	Total, Western District
3,895	3,995	90,435	98,809	908,770	917,891	13.91	14.01	186.52	139.16	.949	1.040	1.826	2.052	United States
22,547	23,052	986,470	986,766	3,896,676	4,009,514	15.37	15.31	70.96	73.63	1.106	1.093	2.226	2.563	

Commutation traffic included above						Miles per passenger per road				Revenue per passenger-mile				District and region
Revenue passengers carried (thousands)		Revenue passengers carried one mile (thousands)		Passenger revenue		Commutation		Other than commutation		Commutation		Other than commutation		
1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933 (Cents)	1932 (Cents)	1933 (Cents)	1932 (Cents)	
14,566	14,275	688,827	726,158	$17,866,593	$18,044,170	14.56	14.23	98.32	97.72	2.594	2.484	2.611	2.485	Eastern District
12,718	12,972	17,457	17,178	339,966	342,923	17.67	17.28	85.85	85.44	1.948	1.808	2.634	2.595	New England Region a/
61,590	63,303	1,101,388	1,118,103	17,477,185	17,745,586	17.43	17.67	38.12	37.84	1.587	1.587	2.560	2.745	Great Lakes Region
		1,764,013	2,049,778	37,817,957	38,315,827									Central Eastern Region b/
209,409	209,778	3,484,408	4,078,199			16.63	16.57	55.71	52.97	1.085	1.064	2.624	2.990	Total, Eastern District
														Southern District:
139	135	1,643	2,165	21,264	27,077	11.85	16.64	88.33	82.30	1.189	1.573	2.180	2.826	Pocahontas Region
19,127	21,642	196,606	221,346	2,467,540	2,802,420	10.25	10.23	73.97	110.90	1.256	1.266	1.796	2.631	Southern Region
19,266	21,787	197,849	223,498	2,489,884	2,829,497	10.27	10.25	73.98	106.10	1.256	1.266	1.801	2.656	Total, Southern District
														Western District:
15,532	17,098	170,998	173,772	3,051,177	3,075,898	11.00	14.17	149.89	199.30	1.784	1.770	1.710	2.131	Northwestern Region
28,824	30,288	368,934	443,888	5,846,840	5,967,592	12.81	14.65	121.27	141.31	1.585	1.344	1.806	2.077	Central Western Region
438	587	3,838	5,950	51,766	73,248	8.76	9.89	130.54	155.54	1.348	1.231	1.917	1.915	Southwestern Region
43,814	47,973	543,397	623,617	8,949,933	7,048,909	14.27	14.51	149.49	136.96	1.656	1.487	1.826	2.052	Total, Western District
272,489	319,462	4,311,658	4,925,708	46,856,676	53,230,225	15.85	15.80	78.81	78.80	1.088	1.088	2.226	2.563	United States

MMISSION

(EXHIBIT AM)

Statement No. M-226
DECEMBER, 1933

LWAYS IN THE UNITED STATES

ting and terminal companies not included

C

FOR TWELVE MONTHS ENDED WITH DECEMBER, 1933 AND 1932

Average miles of road operated		Revenue tons carried (thousands)		Revenue tons carried one mile (thousands)		Freight revenue		Miles per revenue ton per road		Revenue per ton-mile		Revenue per ton per road	
1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932
										(Cents)	(Cents)		
7,579	7,632	20,539	20,778	6,167,749	6,139,121	$102,165,151	$106,651,756	122.04	120.90	1.656	1.737	$2.021	$2.100
26,517	26,635	283,701	269,884	47,320,279	45,403,078	470,104,942	466,840,[illegible]	166.90	168.21	.993	1.028	1.657	1.730
24,802	24,677	112,850	102,083	31,182,324	27,211,049	401,660,175	375,516,176	163.60	167.37	.981	1.007	1.578	1.686
58,718	58,944	417,090	402,145	104,700,343	98,753,248	1,063,930,268	1,048,008,958	161.80	164.00	1.016	1.061	1.644	1.740
6,020	6,072	105,053	93,665	28,693,362	26,256,586	181,248,836	166,617,713	278.04	280.35	.627	.635	1.725	1.778
39,454	39,752	148,180	137,948	35,040,824	28,218,227	322,087,397	307,345,698	208.72	205.50	1.072	1.089	2.173	2.236
45,474	45,824	253,243	231,112	58,934,186	54,476,713	503,275,233	473,963,409	232.72	235.72	.854	.870	1.987	2.051
48,366	48,467	127,588	104,189	27,970,190	25,603,616	300,792,963	280,881,180	219.23	236.16	1.075	1.139	2.358	2.690
53,453	53,589	131,317	132,770	37,648,778	37,353,816	409,588,965	429,198,965	288.28	281.34	1.088	1.149	3.117	3.233
35,378	35,957	90,139	84,247	20,385,451	19,177,004	214,008,580	218,278,348	225.49	217.31	1.053	1.138	2.374	2.474
135,189	135,413	349,080	325,201	86,144,619	81,134,536	924,129,982	927,758,833	246.80	249.49	1.073	1.143	2.648	2.853
239,381	240,381	1,249,373	1,158,458	289,779,186	274,368,395	2,891,336,083	2,849,750,800	199.92	202.31	.997	1.085	1.994	2.115

TIC

Average miles of road operated		Revenue passengers carried (thousands)		Revenue passengers carried one mile (thousands)		Passenger revenue		Miles per passenger per road		Revenue per passenger-mile		Revenue passengers per car	
1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932
										(Cents)	(Cents)		
6,805	6,718	52,508	60,139	1,595,853	1,689,252	$32,901,071	$40,120,117	27.76	27.42	2.060	2.432	17.18	17.26
22,107	23,145	86,188	99,850	3,387,676	3,972,746	81,777,412	96,666,681	39.42	38.04	2.413	2.477	11.62	11.08
19,140	19,533	178,483	201,549	4,848,555	5,340,688	90,597,095	103,327,807	26.01	24.56	1.998	2.089	12.82	12.94
47,652	49,391	317,219	360,948	9,500,112	10,173,009	197,215,964	224,893,805	29.95	28.18	2.076	2.211	12.85	12.72
5,337	5,712	2,522	2,487	212,307	211,269	5,305,652	5,976,083	68.14	78.65	2.501	2.828	5.76	5.31
37,535	38,126	40,919	34,245	1,807,878	1,618,881	33,455,220	34,868,325	44.18	47.28	1.851	2.277	7.95	6.71
43,090	43,838	43,441	36,930	2,020,185	1,830,170	38,850,872	42,840,336	46.50	49.56	1.923	2.341	7.64	6.51
43,133	43,432	23,820	28,230	1,339,982	1,350,586	26,615,648	29,390,038	56.29	47.84	1.986	2.176	8.45	7.98
49,893	50,774	45,087	49,277	2,796,337	2,827,089	52,344,034	61,311,680	62.00	57.37	1.872	2.169	8.98	8.15
51,898	52,694	4,443	5,649	250,551	295,031	13,965,441	18,195,604	141.43	140.39	5.575	6.180	5.31	5.94
124,924	126,940	73,290	79,156	4,824,750	4,970,666	92,925,123	108,860,908	66.74	62.80	1.926	2.190	8.08	7.60
215,626	220,069	432,950	477,034	16,345,047	16,973,665	329,011,919	376,595,043	37.75	35.58	2.013	2.219	10.21	9.78

Commutation traffic included above						Miles per passenger per road				Revenue per passenger-mile			
Revenue passengers carried (thousands)		Revenue passengers carried one mile (thousands)		Passenger revenue		Commutation		Other than commutation		Commutation		Other than commutation	
1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932	1933	1932
										(Cents)	(Cents)	(Cents)	(Cents)
16,188	17,548	688,807	706,782	$7,966,523	$9,016,170	16.46	16.85	58.21	56.85	1.267	1.273	3.014	3.304
82,080	75,007	1,101,944	1,018,401	14,477,745	15,140,488	11.72	11.57	39.12	37.17	1.048	.997	2.626	3.084
109,181	107,173	1,764,013	1,695,794	18,473,185	21,150,975	12.18	12.69	41.50	39.00	1.047	1.034	2.569	2.833
207,409	205,774	3,494,408	4,072,199	37,917,457	43,315,827	16.69	16.57	55.71	52.97	1.085	1.064	2.652	2.976
139	135	1,682	2,125	21,964	27,072	13.85	14.66	86.33	82.30	1.189	1.273	2.553	2.844
19,127	21,642	196,004	221,568	2,447,340	2,802,480	10.25	10.23	73.97	110.90	1.259	1.262	1.582	2.457
19,266	21,787	197,689	223,692	2,469,286	2,829,492	10.27	10.26	75.38	106.10	1.258	1.266	1.995	2.480
14,732	17,088	730,995	777,570	8,581,177	9,076,228	15.90	16.17	165.89	139.30	1.100	1.117	1.901	2.446
84,[illegible]	30,286	588,904	659,288	5,836,990	5,957,533	13.51	13.51	134.97	127.51	.986	.903	2.054	2.273
[illegible]	587	5,802	5,490	51,766	75,243	9.12	9.19	155.52	159.58	1.327	1.344	2.251	2.294
43,414	47,901	819,597	690,017	6,229,933	7,068,909	14.27	14.41	185.63	136.96	1.006	1.027	2.062	2.378
272,089	315,462	4,311,654	4,985,708	46,636,676	53,830,228	15.85	15.80	74.81	74.80	1.082	1.068	2.347	2.697

101111-0 U.S. GOVERNMENT PRINTING OFFICE : 1934

Subject to revision

INTERSTATE COMMERCE COMMISSION
BUREAU OF STATISTICS (EXHIBIT AN)

Statement No. M-125
DECEMBER, 1933

SELECTED INCOME AND BALANCE-SHEET ITEMS OF CLASS I STEAM RAILWAYS IN THE UNITED STATES

Compiled from 145 reports (Form IBS) representing 150 steam railways [fol. 2160]

EXHIBIT "AN"

H. W. H.

TOTALS FOR THE UNITED STATES (ALL REGIONS)

For the month of December		Income Items	For the twelve months of	
1933	1932		1933	1932
$37,762,941	$32,304,900	1. Net railway operating income	$474,309,196	$326,317,907
36,918,877	34,028,788	2. Other income	194,159,684	211,939,647
74,681,818	66,333,688	3. Total income	668,468,880	538,257,554
11,661,414	11,167,409	4. Rent for leased roads	133,143,213	129,649,197
45,987,942	46,479,372	5. Interest deductions	532,618,503	531,776,490
2,331,487	5,012,602	6. Other deductions	16,506,094	27,465,686
59,980,843	62,659,383	7. Total deductions	682,269,810	688,891,373
14,700,975	3,674,305	8. Net income	(13,800,930	(150,633,819
		9. Dividend declarations (from income and surplus):		
9,531,922	3,510,778	9-01. On common stock	76,170,169	75,699,470
~~6,412,564~~	~~3,997,550~~	9-02. On preferred stock	~~21,830,453~~	~~23,744,442~~
4,971,817	3,532,751		14,659,487	18,224,853

Balance-Sheet Items	Balance at end of December	
	1933	1932
Selected Asset Items		
10. Investments in stocks, bonds, etc., other than those of affiliated companies (Total, Account 707)	$749,139,886	$761,306,713
11. Cash	305,796,697	307,585,634
12. Demand loans and deposits	38,510,093	33,703,892
13. Time drafts and deposits	49,728,805	37,866,213
14. Special deposits	44,454,761	44,512,856
15. Loans and bills receivable	8,284,869	13,381,497
16. Traffic and car-service balances receivable	52,059,942	52,437,470
17. Net balance receivable from agents and conductors	38,715,569	34,689,592
18. Miscellaneous accounts receivable	140,517,870	137,665,186
19. Materials and supplies	291,310,361	316,496,320
20. Interest and dividends receivable	43,791,570	37,139,849
21. Rents receivable	1,859,523	1,846,578
22. Other current assets	4,807,597	9,653,419
23. Total current assets (Items 11 to 22)	1,019,619,657	1,026,978,506
Selected Liability Items		
24. Funded debt maturing within six months*	296,930,365	241,476,327
25. Loans and bills payable #	337,909,642	297,201,226
26. Traffic and car-service balances payable	66,050,074	66,281,511
27. Audited accounts and wages payable	196,670,307	202,701,459
28. Miscellaneous accounts payable	49,792,534	63,188,867
29. Interest matured unpaid	258,180,132	197,378,982
30. Dividends matured unpaid	14,247,018	13,303,402
31. Funded debt matured unpaid	97,092,060	50,102,394
32. Unmatured dividends declared	12,817,189	12,030,217
33. Unmatured interest accrued	94,366,397	95,029,047
34. Unmatured rents accrued	21,983,110	18,661,920
35. Other current liabilities	20,419,000	16,817,391
36. Total current liabilities (Items 25 to 35)	1,171,527,463	1,032,696,416

Excludes returns for Class I Switching and Terminal Companies.
* Includes payments which will become due on account of principal of long-term debt (other than that in Account 764, Funded debt matured unpaid) within six months after close of month of report.
(Includes obligations which matures less than two years after date of issue.

[fol. 2165] EXHIBIT "AP"

H. W. H.

Comparative Net Railway Operating Income by Regions for the United States

Class 1 Roads, Including Switching and Terminal Companies

	1932	1933
New England Region	$21,503,432	$18,992,776
	100.00	88.32
Great Lakes Region	46,412,667	73,461,183
	100.00	158.28
Central Eastern Region	91,779,778	121,309,282
	100.00	132.17
Eastern District	159,695,868	213,763,241
	100.00	133.85
Pocahontas Region	57,423,714	68,133,366
	100.00	118.65
Southern Region	25,802,847	59,673,027
	100.00	231.26
Southern District	83,226,561	127,806,393
	100.00	153.56
Northwestern Region	D 2,030,222	41,637,287
	100.00	.....
	100.00	109.34
Central Western Region (1)	62,368,271	68,195,896
(2)	40,268,758	49,584,132
	100.00	123.14
	100.00	99.60
Southwestern Region (2)	23,057,458	22,966,621
(1)	45,156,971	41,578,385
	100.00	92.07
Western District	83,395,507	132,799,804
	100.00	159.24
United States	$326,317,936	$474,369,438
	100.00	145.37

(1) Including A., T. & S. E., P. & S. F., Ft. W. & D. C., C., R. I. & P and C., R. I. & G. Lines.

(2) Excluding A., T. & S. E., P. & S. F., Ft. W. & D. C., C., R. I. & P and C., R. I. & G. Lines.

(Here follows Exhibit "AQ", side folio 2166)

[fol. 2166]

EXHIBIT "AQ" H. W. H.

Average Prices Received by Farmers for Livestock on the Fifteenth of Each Month for the Period, January 1932, to February 1934, Inclusive

(Index Numbers—January 15, 1932 — 100)

Month	Prices per 100 pounds										Prices per head					
	Hogs		Beef cattle		Veal calves		Sheep		Lambs		Milk cows		Horses		Mules	
	Amount	Index Nos.	Amount	Index Nos.	Amount	Index Nos.	Amount	Index Nos.	Amount	Index Nos.	Amount	Index Nos.	Amount	Index Nos.	Amount	Index Nos.
1932—June 15	2.82	75.00	3.81	88.81	4.63	82.39	2.36	95.16	4.49	101.35	36	85.72	61	108.93	67	106.35
July 15	4.23	112.50	4.52	105.36	5.00	88.97	2.37	95.57	4.37	98.64	36	85.72	61	108.93	66	104.76
August 15	4.06	107.98	4.35	101.40	4.93	87.72	2.19	88.31	4.11	92.78	36	85.72	61	108.93	66	104.76
September 15	3.78	100.53	4.31	100.47	5.12	91.11	2.17	87.50	4.11	92.78	36	85.72	59	105.36	66	104.76
October 15	3.25	86.44	3.91	91.14	4.75	84.52	2.03	81.86	3.95	89.16	34	80.95	57	101.78	65	103.17
November 15	3.05	81.12	3.73	86.95	4.47	69.54	2.06	83.07	3.91	88.26	33	78.57	57	101.78	63	100.00
December 15	2.73	72.61	3.41	79.49	4.16	74.02	2.04	82.26	3.95	89.16	32	76.19	56	100.00	61	96.83
1933—January 15	2.68	71.28	3.28	76.46	4.12	73.31	2.10	84.68	4.09	92.32	32	76.19	59	105.36	63	100.00
February 15	2.94	78.19	3.31	77.16	4.75	84.52	2.16	87.10	4.19	94.58	31	73.81	62	110.71	67	106.35
March 15	3.22	85.64	3.42	79.72	4.57	81.32	2.18	87.90	4.27	96.39	31	73.81	64	114.28	70	111.11
April 15	3.21	85.37	3.54	82.52	4.36	77.58	2.29	92.34	4.34	97.97	32	76.19	67	119.64	73	115.87
May 15	3.88	103.19	3.95	92.07	4.50	80.07	2.47	99.60	4.72	106.54	34	80.95	71	126.78	77	122.22
June 15	3.96	105.32	4.04	94.17	4.51	80.25	2.46	99.19	5.18	116.93	35	83.34	71	126.78	78	123.81
July 15	3.98	105.85	3.97	92.54	4.62	82.21	2.59	104.44	5.24	118.28	36	85.72	72	128.57	79	125.40
August 15	3.79	100.80	3.79	88.34	4.75	84.52	2.57	103.63	5.26	118.73	35	83.34	71	126.78	78	123.81
September 15	3.73	99.20	3.61	84.15	4.96	88.26	2.52	101.61	5.08	114.67	34	80.95	69	123.21	77	122.22
October 15	4.17	110.91	3.50	81.59	4.84	86.12	2.46	99.19	5.01	113.09	34	80.95	69	123.21	78	123.81
November 15	3.70	98.41	3.32	77.39	4.66	82.92	2.38	95.97	4.95	111.74	32	76.19	69	123.21	81	128.57
December 15	2.92	77.66	3.12	72.73	4.20	74.73	2.48	100.00	4.92	111.06	31	73.81	70	125.00	84	133.33
1934—January 15	3.06	81.38	3.33	77.62	4.46	79.36	2.71	109.28	5.50	124.15	31	73.81	73	130.36	87	138.10
February 15	3.87	102.93	3.67	85.54	5.02	89.32	3.46	139.51	6.55	147.85	32	76.19	80	142.86	94	149.20

Authority: U. S. Department of Agriculture—Crops and Markets, Feb. 1933 (p. 35) and Nov. 1933 (p. 422); mimeographed reports on farm prices dated Feb. 3, 1934, and Market Reviews and Statistical Summaries of Livestock, Meats, and Wool, March 7, 1934 (p. 193).

[fol. 2166a] COMMISSION'S EXHIBIT "A"

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of Fourth Section Application No. 15445, filed January 19, 1934, and Amendment No. 1 to Fourth Section Application No. 15445, filed February 2, 1934, by Southwestern Freight Bureau, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 20th day of March, A. D. 1934.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission, 1887.)

[fol. 2166b] FOURTH SECTION APPLICATION

Commission's No. 15445.
Southwestern Freight Bureau No. B-1053.
File 49028.
F. A. Leland Chairman, Century Building.

St. Louis, Mo., January 17, 1934.

To the Interstate Commerce Commission, Washington, D. C.

Horses, Mules, Burros and Asses To, From and Between Points in Southwestern Territory, I. C. C. Docket No. 12358 and Related Cases

The Southwestern carriers, defendants in the proceedings under Docket 12358 and related cases, respectfully make application to the Interstate Commerce Commission for a fourth section order which will permit the departures from the amended Fourth Section incident to, and created by, the orders entered by the Commission in the above proceedings, dated December 11, 1933, and to permit the same fourth section departures from and to other points from and to which it is necessary and desirable to establish the same basis of rates.

In simple terms, this application is for a Fourth Section Order applicable on Horses, Mules, Burros and Asses,

which, in terms, will be the same as applies on Hogs under Fourth Section Order 11135 (as supplemented) to permit the establishment of a system of rates from, to and between points in the Southwest on the basis of rates, and the minimum weights attaching thereto, prescribed in these proceedings.

The orders under Docket 12358 and related cases require that the carriers establish on or before March 8th on statutory notice rates between certain specified points in the Southwest on Horses and Mules and in some cases on Horses, Mules, Burros and Asses which shall be 115 per cent of the rates on fat cattle prescribed in Livestock, Western District Rates, I. C. C. Docket 17000, Part 9 (172 I. C. C. 1, 179 I. C. C. 104, 190 I. C. C. 611), from and to the same points. In connection with the Livestock western district rates the Commission recognized that fourth section departures result from requiring rates to be established on the basis of a distance table, the rates thereunder to be de-
[fol. 2166c] termined by the shortest distance via which a carload of livestock could be transported without transfer of lading; the rates thus determined to be applied via reasonably direct routes, including only those suitable for the transportation of livestock.

The carload rates and minimum weights now in effect on Horses and Mules are also applicable on Burros and Asses, and although the orders of December 11th do not, in all cases, include the Burros and Asses, it is desirable, as a practicable matter, to include these animals on the same basis as on Horses and Mules.

The decision in Docket 12358 and related cases is predicated upon the rates on fat cattle prescribed in Livestock Western District Rates and employs precisely the same method of determining the rates via the short formula distance, except that the level is 15 per cent higher than on fat cattle, or in other words, the same level as prescribed in the Livestock Western District Rates on hogs, carloads.

As a practical matter it becomes necessary for the Southwestern Carriers to establish rates on Horses, Mules, etc., between points not specifically included in the rate orders, but which are fully embraced within the scope of the rates under Livestock Western District Rates, and within the scope of Fourth Section Order No. 11135 as supplemented.

The departures from the fourth section are manifestly the same on Horses, Mules, Burros and Asses as on hogs.

It is not deemed necessary that details of such departures be shown in this application to enable the Commission to afford the same fourth section relief in connection with this order that applies to hogs in carloads under Fourth Section Order No. 11135 as supplemented.

[fol. 2166d] F. A. Leland.

Verification

STATE OF MISSOURI,
City of St. Louis, ss:

F. A. Leland, being duly sworn, deposes and says that he is chairman of the Southwestern Freight Bureau and agent for the applicants in the foregoing application; that he has read said application, subscribed by him, and knows the contents thereof; that the same are true as stated, of his own knowledge, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, he believes them to be true.

F. A. Leland.

Subscribed in my presence, and sworn to before me, by the affiant above named, this 17th day of January, 1934. E. J. Senn, Notary Public in and for the State and City above named. (Seal.) My commission expires October 5, 1934.

[fol. 2166e] AMENDMENT No. 1 TO FOURTH SECTION APPLICATION

Commission's No. 15445.
Southwestern Freight Bureau No. B-1053.
File 49028.

F. A. Leland, Chairman, Century Building

St. Louis, Mo., January 31, 1934.

To the Interstate Commerce Commission, Washington, D. C.

Horses, Mules, Burros and Asses, To, From and Between Points in Southwestern Territory, I. C. C. Docket No. 12358 and Related Cases

It is respectfully requested that the first paragraph on Page 1 of Fourth Section Application No. 15445 dated January 17th, 1934, be corrected to read as follows:

"The carriers parties to J. E. Johanson's I. C. C. No. 2457, (Southwestern Lines' Tariff 131-I), respectfully make application to the Interstate Commerce Commission for a fourth section order which will permit the departures from the amended fourth section incident to, and created by, orders entered by the Commission in the above proceeding, dated December 11th, 1933, and to permit the same fourth section departures from and to other points, from and to which it is necessary and desirable to establish the same basis of rates.

The territory from and to which the prescribed basis of rates will be published is indicated in Exhibit No. 1, attached hereto and made a part hereof."

This amended fourth section application is being filed with the Commission as the result of telegram dated January 30th, 1934, from Secretary McGinty to the undersigned, and reply dated January 31st, 1934.

[fol. 2166f] F. A. Leland.

Verification

STATE OF MISSOURI,
City of St. Louis, ss:

F. A. Leland, being duly sworn, deposes and says that he is Chairman of the Southwestern Freight Bureau and agent for the applicants in the foregoing application; that he has read said application, subscribed by him, and knows the contents thereof; that the same are true as stated, of his own knowledge, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, he believes them to be true.

F. A. Leland.

Subscribed in my presence, and sworn to before me, by the affiant above named, this 31st day of January, 1934. E. J. Senn, Notary Public in and for the State and City above named. (Seal.) My commission expires Oct. 5, 1934.

(Encl. Ex. 1.)

[fol. 2166g] EXHIBIT No. 1

Amendment No. 1 to Fourth Section Application No. B-1053

Statement of Stations From and to Which Rates Are to Be Published

1. From stations in Arkansas; also stations in Louisiana west of the Mississippi River, to:
   Arkansas—all stations.
   Illinois—stations as per Note 4.
   Kansas—all stations except C., B. & Q. and St. J. & G. I.
   Louisiana—stations west of the Mississippi River.
   Missouri—stations as per Notes 1, 2 and 3.
   New Mexico—stations as per Note 5.
   Oklahoma—all stations.
   Texas—all stations.
   Louisiana, Mississippi and Tennessee stations as per Note 7.

2. From Colorado stations as per Note 6 to:
   Arkansas—all stations.
   Louisiana—west of Mississippi River.
   Missouri—stations as per Note 2.
   New Mexico—stations as per Note 5.
   Oklahoma—all stations.
   Texas—all stations.
   Louisiana, Mississippi and Tennessee—stations as per Note 7.

3. From Illinois stations as per Note 4 to:
   Arkansas—all stations.
   Louisiana—stations west of Mississippi River.
   Missouri—stations as per Note 2, except as provided in Note 8.
   New Mexico—stations as per Note 5.
   Oklahoma—all stations.
   Texas—all stations.

4. From Kansas stations except C., B. & Q. and St. J. & G. I., to:
   Arkansas—all stations.
   Louisiana—stations west of Mississippi River.
   Missouri—stations as per Note 2.
   New Mexico—stations as per Note 5.

Oklahoma—all stations.
Texas—all stations.
Louisiana, Mississippi and Tennessee stations as per Note 7.

5. From Missouri stations as per Notes 1, 2 and 3, to:
Arkansas—all stations.
Louisiana—stations west of Mississippi River.
Missouri—stations as per Note 2, except as provided in Note 8.
New Mexico—stations as per Note 5.
Oklahoma—all stations.
Texas—all stations.

6. From Missouri stations as per Note 2, to:
Kansas—all stations except C., B. & Q. and St. J. & G. I.
Missouri—stations as per Notes 1, 2 and 3 except as provided in Note 8.
Louisiana, Mississippi and Tennessee—stations as per Note 7.

[fol. 2166h] 7. From Kansas City and St. Joseph, Mo., to:

Louisiana, Mississippi and Tennessee—stations as per Note 7.

8. From Oklahoma and Texas stations; also New Mexico stations as per Note 5, to:
Arkansas—all stations.
Colorado—stations as per Note 6.
Illinois—stations as per Note 4.
Kansas—all stations except C. B. & Q. and St. J. & G. I.
Louisiana—stations west of Mississippi River.
Missouri—stations as per Notes 1, 2 and 3.
New Mexico—stations as per Note 5.
Oklahoma—all stations.
Texas—all stations.
Louisiana, Mississippi and Tennessee—stations as per Note 7.

9. From Louisiana, Mississippi and Tennessee stations as per Note 7, to:
Arkansas—all stations.
Kansas—all stations except C., B. & Q. and St. J. & G. I.
Louisiana—west of Mississippi River.

Missouri—stations as per Note 2, also Kansas City and St. Joseph.
New Mexico—stations as per Note 5.
Oklahoma—all stations.
Texas—all stations.

Note 1—Missouri, stations south of the Missouri River, including Kansas City, St. Joseph and St. Louis, Mo., except stations in Note 2.

Note 2—Missouri stations assigned to Groups 300-V, 300-X, 300-Y or 300-Z in S. W. L. Territorial Directory No. 2-A, J. E. Johanson's I. C. C. 2450, viz.: stations south of the St. L.-S. F. Ry., St. Louis to Pacific, Mo. Pac. to Labadie, and C., R. I. & P. to Kansas City, except Bagnell & Warsaw branches of the Mo. Pac., and except M-K-T. stations south of Windsor to Lewis, inclusive.

Note 3—Missouri stations north of the Missouri River:
A. T. & S. F. stations, Carrollton and west;
C., B. & Q. stations between Kansas City and St. Joseph;
M-K-T. stations;
Wabash stations between Kansas City and St. Louis.

Note 4—Stations in Illinois:
Cairo;
East St. Louis;
National Stock Yards;
Thebes;
I. C. stations between East St. Louis and Thebes and Cairo;
Mo. Pac. stations between East St. Louis and Thebes and Cairo.

Note 5—New Mexico stations named in Items 380 and 410 of S. W. L. Tariff 131-I, I. C. C. 2457.

[fols. 2166i-2170] Note 6—Colorado stations on and south of the C., R. I. & P., and Un. Pac. through Limon to Denver, Colo., and on and east of the A. T. & S. F., C. & S., D. & R. G. W. from Denver through Pueblo and Trinidad to Sixela, N. M., also stations on A., T. & S. F. south of Trinidad.

Note 7—Stations east of the Mississippi River:
Memphis, Tenn.;
Vicksburg, Miss.;

Natchez, Miss.;
Baton Rouge, La.;
New Orleans, La.;
L. & A. stations;
Y. & M. V. stations south of Baton Rouge.

Note 8—The rates between Southern Missouri and between Southern Missouri on the one hand and other Missouri stations on the other (including points in Illinois and Kansas grouped with Kansas City, St. Joseph and St. Louis) and the routing in connection therewith, are to be the same as provided on Hogs, under the 17000 Part 9 decision; and where rates on Hogs are published by Agent Boyd or in tariffs of individual lines, the rates on Horses, etc., will be taken care of in the same manner.

Note 9—Suitable provisions will be made to the effect that rates will not apply

(a) Via routes through stations in Illinois and Missouri not named in Notes 1, 2, 3 and 4.
(b) Via routes through stations in Kansas on the C., B. & Q. or St. J. & G. I.
(c) Via routes through stations in Nebraska.
(d) Via routes through stations in Colorado not included in Note 6.
(e) Via routes through stations in New Mexico not included in Note 5.
(f) Via routes in Louisiana (east of Mississippi River), Mississippi and Tennessee not covered by Note 7, except when via the Ill. Cent. and/or Y. & M. V.

[fol. 2171] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY—Filed Jan. 28, 1935

There is presented for decision in this appeal no issue which brings into question the administrative discretion of the Interstate Commerce Commission, nor will the Court be called upon to pass upon the weight of the evidence before the Commission nor to substitute its judgment for that of the Commission as to the expediency or wisdom of its assailed orders. The only issues which appellants will urge

upon the Court relate exclusively to questions of law and to the failure of the Commission in arriving at the findings upon which its assailed orders were based to conform to and abide by the limits of its statutory powers and authority as defined by numerous prior decisions of this Court. The points of law upon which appellants expect to rely here follow:

[fol. 2172] Point I

The assailed finding of the Interstate Commerce Commission, together with the orders based thereon, whereby the previously prescribed rates on carload shipments of horses and mules between points involved in the scope of the proceedings herein under review were condemned as being unjust and unreasonable, was predicated upon a mistake of law, was arbitrarily made without due regard to the transportation standard and without adequate supporting or basic factual findings, is unsupported by substantial evidence—in fact, is contrary to and in willful disregard of the facts established of record—and constituted in general a flagrant and capricious abuse of the power and authority conferred upon it by statute. (Germane to the entire case, including the assignments relating to the abortive effort of said Commission to coerce the appellant carriers into an acceptance of its findings without the issuance of a formal rate order by means of the peremptory withdrawal of fourth-section relief previously granted.)

Point II

The action of said Commission in avowedly rejecting and in refusing to accord weight and legal significance to the numerous rate comparisons submitted in evidence by appellants in justification of the reasonableness of the rates on horses and mules contemporaneously maintained by them in compliance with prior orders of said Commission, whereby such rates were undeniably demonstrated to have been less than reasonable maxima through comparison with the rates (and earnings derived therefrom) which had been prescribed by it on divers other commodities, constituted an illegal abdication by said Commission of the functions and [fol. 2173] duties imposed upon it by law, and the orders entered by it without according due weight and authority to such rejected evidence are vain, invalid, and useless. (Ger-

mane particularly to the 6th, 7th, 14th, 15th, 50th, and 51st assignments of error.)

Point III

It being patent from the face of said Commission's report wherein maximum reasonable rates were prescribed to apply on shipments of fat cattle in southwestern territory that such rates were predicated upon the economic distress of the edible livestock industry and with scant heed to or recognition of the transportation standard, and there being no finding by it of the existence of the same or of a similar economic distress in respect of the horse and mule traffic or of the existence of improved transportation conditions, nor in addition any factual basis for such findings, the prescribed fat cattle rates afford no lawful guide by which to measure the reasonableness of the rates on horses and mules, and the action of said Commission in condemning rates on horses and mules previously prescribed by it and thereafter continued in effect without complaint for a period of eight or nine years, and in prescribing in lieu thereof, because of a purported greater or less similarity of transportation conditions between the two classes of livestock, much lower rates which shall not exceed by more than 15 per cent the admittedly low and depressed rates on fat cattle in that area, constituted an illegal disregard of the evidence of record before it and an abuse of the powers and authority conferred upon it by law, and all orders predicated thereon are vain, invalid, and useless. (Germane particularly to 8th, 10th, 40th, 41st, 42nd, 43rd, 44th, and 55th assignments of error.)

[fol. 2174] Point IV

The rates on horses and mules are not affected by competitive conditions such as those which have influenced the rates on edible livestock, and there is no finding by the Commission to the contrary, nor is there any substantial evidence of record to support such a finding. (Germane particularly to 44th assignment of error.)

Point V

In undertaking to prohibit appellants from maintaining and applying carload rates on horses and mules in southwestern territory which exceed by more than 15 per cent the

rates theretofore prescribed to apply on fat cattle in a wholly different proceeding, and upon a radically different showing of economic and transportation conditions affecting the traffic, said Commission has unlawfully based its assailed orders upon evidence not legally before it in the cases wherein such orders were entered, and the latter are hence arbitrary, illegal, and void. (Germane particularly to 9th assignment of error.)

Point VI

The Commission's finding that only the better grades of horses and mules find their way to the stock markets is contradicted by affirmative evidence of record. (Germane particularly to 13th and 49th assignments of error.)

Point VII

The findings of said Commission are contradictory and in conflict, (a) it being stated that the primary markets for cattle, sheep, and hogs are also the primary markets for horses and mules, whereas, so far as the Southwest is concerned, it is recognized that the flow of the traffic is mainly to the Southeast, and (b) it being declared it is illogical to prescribe rates on the horse and mule traffic unrelated to the rates on cattle, yet in other territories, as also in the 1924 decision herein as to southwestern territory, rates on [fol. 2175] horses and mules have been uniformly prescribed with no fixed relation whatsoever to the rates currently in effect on cattle. (Germane particularly to the 43rd and 52nd assignments of error.)

Point VIII

The findings of said Commission whereby its previously prescribed rates on horses and mules in southwestern territory were condemned having been palpably influenced by the existence elsewhere than in southwestern territory, particularly in the states of Kansas and Nebraska, of intrastate rates on horses and mules pointedly declared by it to be subnormal, said Commission thereby abdicated the functions and duties conferred upon it by law and its orders entered in pursuance thereof are illegal, invalid, and useless. (Germane particularly to 12th, 47th, and 48th assignments of error.)

Point IX

In the absence of any evidence or finding that transportation conditions in southwestern territory are substantially identical to those in western trunk-line territory, and in particular to the territory in issue in Docket Nos. 12248 and 13273 (the South Dakota and Nebraska cases), and in the face of its repeated declarations, supported by affirmative evidence of record herein, that transportation conditions in southwestern territory are more onerous than in western trunk-line territory, the order of said Commission compelling appellants to reduce their rates on horses and mules in southwestern territory to the level concurrently prescribed as just and reasonable for observance on such traffic in western trunk-line territory evinces a total disregard of the transportation standard and hence is void, invalid, and useless. (Germane particularly to 11th, 16th, 33rd, and 48th assignments of error.)

[fol. 2176]

Point X

The order of the Commission compelling appellants to apply as reasonable maxima in southwestern territory rates on horses and mules which are lower, both relatively and absolutely, than those prescribed by it as just and reasonable in other rate groups where operating conditions are notoriously more favorable than in southwestern territory, and have been repeatedly so recognized by it, evinces a disregard by it of the transportation standard and hence is wholly void, illegal, and useless. (Germane particularly to 52nd and 56th assignments of error.)

Point XI

The Commission having in 1925 authorized appellants to assess a higher level of rates on horses and mules in Texas differential territory than in southwestern territory generally, based upon a finding of the existence of more onerous transportation conditions in the former area than in the latter, and there being in its 1933 report no finding that any change in the relative transportation conditions in these two rate groups has occurred since its prior finding was made, its assailed order whereby appellants have been compelled to reduce their rates on horses and mules in Texas differential territory to the basis prescribed as just and reasonable for application on shipments of horses and mules in southwestern territory generally manifests a total dis-

regard for the transportation standard and hence is void, illegal, and useless. (Germane particularly to the 17th and 53rd assignments of error.)

Point XII

The Commission being without jurisdiction under the scope of the issues raised in the consolidated proceedings to prescribe rates on horses and mules to apply uniformly throughout southwestern territory, its attempt to coerce appellant carriers, by the issuance of its Fourth Section Order No. 11340 of July 24, 1933, whereby previously granted fourth-section relief in connection with the pre-[fol. 2177] scribed rates on horses and mules then in effect in southwestern territory was withdrawn, constituted an illegal abuse and misuse of the powers conferred upon it under the provisions of § 4 for the purpose of compelling appellants, without the issuance by it of an order pursuant to § 1, to accept and give effect to the findings of unreasonableness made in purported compliance with § 1. (Germane particularly to the 2nd, 21st and 39th assignments of error.)

Point XIII

The refusal of the Commission to reopen the consolidated proceedings for reconsideration and to grant appellants a further hearing pursuant to their petition dated November 6, 1933, wherein, among other things, attention was directed to the fact (a) that since the close of the last hearings held therein on May 27, 1932, both the demand for and value of horses and mules had appreciated to a substantial degree, this not representing a mere seasonal fluctuation in demand and value, and (b) the financial integrity of the appellant carriers had been so weakened that they were in no position to stand the drain upon their revenues which would result from the reductions of their rates on horses and mules called for by the findings in the Commission's report of July 24, 1933, was arbitrary and unreasonable. (Germane particularly to 18th, 19th, 45th, 46th, and 54th assignments of error.)

Point XIV

The entire course of the Commission, from the time it reopened in the absence of complaint the South Dakota and

Nebraska cases for consolidation with the southwestern cases until its peremptory denial of appellants' petition for reconsideration and further hearing of November 6, 1933, manifests a set purpose and a fixed design on its part to project into southwestern territory the 115 per cent relation of the horse and mule rates to the fat cattle rates which [fols. 2178-2180] had hitherto been prescribed in the South Dakota and Nebraska cases, although previously declared to be improper in southwestern territory. (Germane particularly to 20th assignment of error.)

Point XV

The assailed order of said Commission is void and useless in that it fails to meet the requirements of the governing statute:

(1) Not being a law unto itself, the Commission in prescribing rates must conform its orders to statutory requirements.

(2) In prescribing rates under § 1 the Commission cannot deny carriers their rights under § 15 nor subject them to penalties for violating § 4.

(3) The Commission cannot impose upon the carriers the burden of seeking relief from § 4 as to rates prescribed by it.

(4) The grant of temporary relief from § 4 has not made this question moot, as carriers are yet subject to burden of obtaining a final order.

(5) Question not rendered moot by mere entry of temporary order without allegation, proof, or finding that rates necessary to meet requirements of § 4 are just and reasonable, or are even reasonably compensatory for longer distances. (Germane particularly to 22nd and 23rd assignments of error.)

[fols. 2181 & 2182] Dated January 23, A. D. 1935.

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for Appellants, Texas and New Orleans Railroad Company et al.

[fols. 2183 & 2184] Acceptance of Service of Statement of Points on Which Appellants Intend to Rely, etc.

The undersigned hereby accepts service as counsel for appellees in the cause numbered, entitled, and pending as above of a copy of the Statement of Points on which Appellants Intend to Rely and of the Portion of the Record Believed Necessary for Consideration Thereof.

Dated this 26th day of January, 1935.

J. Crawford Biggs (A. Q.), Solicitor for the United States of America, Appellee. Nelson Thomas, Solicitor for the Interstate Commerce Commission, Appellee.

[fols. 2185 & 2186] [File endorsement omitted.]

[fol. 2187] Original

IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION DESIGNATING PARTS OF RECORD TO BE PRINTED—Filed March 11, 1935

Whereas the parties to the above-styled cause have by stipulation caused the 44 original exhibits introduced in evidence in the District Court on March 23, 1934, designated as plaintiffs' Exhibits AA to ZZ and AB to AR, inclusive, and as Commission's Exhibit A, to be forwarded to and lodged in the Supreme Court as a part of the record on appeal in said case, instead of a transcript thereof; and whereas said exhibits are more fully described and identified in Transcript Covering the Offering of Documentary Evidence on Final Hearing for Permanent Injunction and include certified copies of all testimony given before the Interstate Commerce Commission in the respective proceedings of which certain of said exhibits are transcripts and of all exhibits presented to the Interstate Commerce Commission along with said testimony, a list of which last-named exhibits is hereto attached as Appendix I to this stipulation;

[fol. 2188] Now, therefore, the parties to the above-styled cause do hereby stipulate that all or any part of said first-named exhibits, whether printed or not, may be quoted

and referred to in brief and oral argument and may be considered by the Supreme Court in its disposition of this cause.

The parties to the above-styled cause further stipulate that the Clerk of the Supreme Court shall cause this stipulation (in lieu of appellants' "Designation of Portions of Record to be Printed") and Appendix I hereto to be printed, and in addition thereto only the following parts of the said original record transmitted as aforesaid:

The entire Transcript of Record on Appeal, including narrative statement of oral testimony given before the Interstate Commerce Commission (but not including the documents certified to the Supreme Court as original exhibits other than as designated below), and the following documents accompanying the same which have been certified to this Court as original exhibits:

Exhibit MM. Orders of the Commission entered May 27, 1924, and June 25, 1924, in Docket No. 13001 (certificate omitted).

Exhibit NN. Order of the Commission entered July 26, 1922, in I. & S. Docket No. 1483 (certificate omitted).

Exhibit OO. Order of the Commission entered November 10, 1924, in Docket No. 11018 (certificate omitted).

Exhibit QQ. Petition filed December 29, 1924 (omitting names of complainants listed in paragraph II thereof), order of the Commission entered January 12, 1925, motion for rehearing filed January 15, 1925, petition filed January 15, 1925, and order of the Commission entered March 16, 1925, in Docket No. 12358 et al. (certificate omitted).

Exhibit RR. Petition to modify filed July 17, 1928, in Docket No. 12358 et al. (certificate omitted).

[fol. 2189] Exhibit SS. Report proposed by Examiner Eshelman and filed November 18, 1925, omitting appendices to proposed report (certificate omitted).

Exhibit TT. Orders of the Commission entered January 4, 1926, and February 6, 1928, in Docket No. 12358 et al. (certificate omitted).

Exhibit UU. Order of the Commission entered January 4, 1926, in Dockets Nos. 12268 and 13273 (certificate omitted).

Exhibit VV, Report on further hearing proposed by Examiner Robert S. Simons, omitting appendices to proposed report, notice dated January 7, 1930, and order of the Com-

mission entered February 1, 1932, in Docket No. 12358 et al., including certificate.

Exhibit WW. Supplemental Fourth Section Order No. 11340 entered January 6, 1934, second supplemental Fourth Section Order No. 11340 entered February 5, 1934, and third supplemental Fourth Section Order No. 11340 entered March 12, 1934 (certificate omitted).

Exhibit XX. Petition of southwestern carriers for reconsideration and modification of Commission's findings and for further hearing filed November 8, 1933, answer of the Chamber of Commerce of Kansas City, Missouri, filed November 23, 1933, motion to delete filed by defendants December 26, 1933, and orders of the Commission entered February 5, 1934, and March 12, 1934, including certificate.

Exhibit YY. Fourth Section Order No. 11485 entered February 3, 1934 (certificate omitted).

Exhibit ZZ. Title to Commission's Rules of Practice (page 1), including the first paragraph of note 1, all of paragraph 2 of subdivision (b) of Rule XIII, entitled "Documentary Evidence" (page 34), and all of subdi-
[fol. 2190] visions (a), (b), and (h) of Rule XVIII, entitled "Applications under Fourth Section" (pages 45-49), of the Commission's Rules of Practice (certificate omitted).

Exhibit AF. Copy of telegram to Commission from District Judge Albert L. Reeves, dated February 2, 1934.

Exhibit AH. The cover-page, the first paragraph of the "Introduction" on page 1, the last line on page 4, and all of Chapter VIII, including the title, on pages 81-83 of "The Farm Horse," a brochure issued by the Bureau of the Census.

Exhibit AI. All of the title preceding the word "contents" on page 1 and all of pages 55-57 under the sub-topic "Horses and Mules" of a brochure entitled "The Agricultural Outlook for 1934" by the United States Department of Agriculture (certificate omitted).

Exhibit AJ. That portion relating to "Horses and Mules" on page 1 of "Crops and Markets" for February, 1934, issued by the United States Department of Agriculture.

Exhibit AL. Extract from testimony given in I. C. C. Docket No. 25627, including certificate.

Exhibit AM. The diagrams on Statements No. M-100 for June and December, 1933, and the entire statistical tabulations for the six-month and twelve-month periods on the reverse side thereof, also Statement No. M-220 for December, 1933 (certificate omitted).

Exhibit AN. The first page, being the "Totals for the United States (all regions)," of Statement No. M-125 for December, 1933 (certificate omitted).

Exhibit AP. Statistical statement entitled "Comparative Net Railway Operating Income by Regions for the United States."

[fol. 2191] Exhibit AQ. Statistical statement entitled "Average Prices Received by Farmers for Livestock on the Fifteenth of each Month for the Period January, 1932, to February, 1934, Inclusive" (excluding that portion withdrawn upon tender thereof in evidence, i. e., January to March, 1932).

Commission's Exhibit A. Application for fourth-section relief.

Dated March 9, 1935.

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for Appellants, Texas & New Orleans Railroad Company et al. Elmer B. Collins, Special Assistant to the Attorney General. Nelson Thomas, Attorney for Interstate Commerce Commission.

[fol. 2192] Appendix I to Stipulation Designating Parts of Record to Be Printed

List of Exhibits Introduced Before the Commission Which Are a Part of Transcripts of Severel Commission Proceedings Introduced in Evidence in the District Court by the Appellants

[fol. 2193] List of Exhibits Introduced at Hearing in Docket No. 11018, Wichita Board of Commerce et al. v. Director General et al., at Wichita, Kans., January 16, 1920, Before Examiner Graham, Included in Plaintiffs' Exhibit AA

Complainants' Exhibit No. 1, Witness Huston. Sketch map showing territory involved in complaint.

Complainants' Exhibit No. 2, Witness Huston. Extract from Commission's decision in Memphis Southwestern Investigation, 55 I. C. C. 515.

Complainants' Exhibit No. 3, Witness Huston. Extract from Commission's decision in 23 I. C. C. 656.

Complainants' Exhibit No. 4, Witness Huston. Pages a-19. Statement of horse and mule rates from Kansas City and St. Louis, Mo., to points in southwestern territory.

Complainants' Exhibit No. 5, Witness Huston. Sketch map showing location by dots of selected stations through southwestern states, with exception of Texas. Complainants' Exhibit No. 6, Witness Huston. Statement showing rates resulting from study of rates on horses and mules in the southwest shown in Exhibit 4, compared with rates on beef cattle from Wichita to points in Arkansas, Louisiana, New Mexico, Oklahoma and Texas published in Agent Leland's I. C. C. No. 1321.

Complainants' Exhibit No. 7, Witness Huston. Statement showing present and proposed rates from Wichita, Kan., compared with present rates from Kansas City, Mo. (2 sheets).

Complainants' Exhibit No. 8, Witness Huston. Statement showing comparison of rates on horses and mules from Wichita, Kans., to Wichita Falls, Dallas and Beaumont, Texas, compared with rates in the same general territory.

Complainants' Exhibit No. 9, Witness Huston. Extract from Commission's decision in Natchez (Miss.) Chamber of Commerce v. A. H. T. Ry. Co., 52 I. C. C. 558.

Complainants' Exhibit No. 10, Witness Huston. Statement showing through rates on horses and mules from Wichita, Kans., to points in Arkansas, Louisiana and Texas, also Memphis, Tenn., compared with combination of local rates between the same points.

[fol. 2194] Complainants' Exhibit No. 11, Witness Huston. Extract from Commission's decision in Tileston Mill Co. v. Northern P. R. Co., 8 I. C. C. 346.

Complainants' Exhibit No. 12, Witness Huston. Statement showing percentage relationship of rates on horses and mules as compared with rates on cattle and hogs between Kansas City, Mo., and stations on the main line of the Atchison, Topeka & Santa Fe Ry.

Complainants' Exhibit No. 13, Witness Huston. Statement showing percentage relationship of rates on horses and mules as compared with rates on cattle and hogs between points in New Mexico on the A., T. & S. F. Ry.

Complainants' Exhibit No. 14, Witness Huston. Statement showing percentage relationship of rates on horses and mules as compared with rates on cattle and hogs from Kansas City, Mo., to stations in Texas on the G. C. & S. F. Ry. and P. & S. F. Ry.

Complainants' Exhibit No. 15, Witness Huston. Statement showing percentage relationship of rates on horses and mules as compared with rates on cattle and hogs from stations in Kansas on C., R. I. & P. Ry. to stations in Texas on the C., R. I. & P. Ry. in Texas, Texhoma to Romero, Tex., incl., and from stations in Kansas on the A., T. & S. F. Ry. to stations in Texas on the P. & S. F. Ry. (except stations Angeles to Pecos, incl.), and G. C. & S. F. Ry. stations Coleman to Sweetwater, incl.

Complainants' Exhibit No. 16, Witness Huston. Statement showing precentage relationship of rates on horses and mules as compared with rates on cattle and hogs between Kansas City, Mo., and stations on the main line of the Kansas City Southern Ry.

Complainants' Exhibit No. 17, Witness Huston. Subject showing percentage relationship of rates on horses and mules as compared with rates on cattle and hogs between St. Louis, Mo., and stations on the main line of the Missouri Pacific R. R. in Arkansas and Louisiana.

Complainants' Exhibit No. 18, Witness Huston. Statement showing percentage relationship of rates on horses and mules as compared with rates on cattle and hogs between stations in Colorado and stations in Kansas or Missouri on Missouri Pacific R. R.

Complainants' Exhibit No. 19, Witness Huston. Statement showing percentage relationship of rates on horses and mules as compared with rates on cattle and hogs, using mileage scale applying between Kansas and points in Arkansas on St. L. & S. F. Ry.

[fol. 2195] Complainants' Exhibit No. 20, Witness Huston. Pages 1-2 Statement showing percentage relationship of rates on horses and mules as compared with rates on cattle and hogs between Omaha, Nebr., and stations on the Union Pacific R. R. and Oregon Short Line R. R.

Complainants' Exhibit No. 21, Witness Huston. Pages 1-2 Statement showing percentage relationship of rates on horses and mules as compared with rates on cattle and hogs, using Shreveport Scale prescribed by the Commission in 48 I. C. C. 351 and 48 I. C. C. 292.

Complainants' Exhibit No. 22, Witness Huston. Statement showing comparison of present rates on cattle and hogs, carloads, between Wichita, Kans., and points in the states of Arkansas, Oklahoma, New Mexico, Texas and Louisiana (west of the Mississippi River).

Complainants' Exhibit No. 23, Witness Huston. Statement showing cars of livestock received at Wichita Union Stockyards, Wichita, Kans, by months for years 1917 and 1918.

Defendant's Exhibit No. 1, Witness Dumbeck. Pages 1-4 Statement of rates, etc., on various commodities to and from Wichita and Kansas City, which shows the present relation of rates between the two points and the percentage of the mileage compared with rates.

Defendant's Exhibit No. 2, Witness Dumbeck. Map of the St. Louis-San Francisco Ry. Co.

Defendant's Exhibit No. 3, Witness Marsh. Map of southwestern states showing rate groupings.

Defendant's Exhibit No. 4, Witness Marsh. Statement showing the Thackerville combination of rates versus the through rates.

Defendant's Exhibit No. 5, Witness Marsh. Statement showing the comparison of rates on horses and mules southbound from Kansas City territory to Texas points as against the northbound rates from Texas points to Kansas City territory.

Defendant's Exhibit No. 6, Witness Marsh. Statement showing the mileage scale applying from Kansas to Oklahoma points as compared with the scale applying between points in Oklahoma and the scale applying between points in Texas. Particular attention is directed to the inconsistencies in the scale applying from Kansas to Oklahoma points.

[fol. 2196] Defendant's Exhibit No. 7, Witness Marsh. Statement showing that carloading, car earning and car haul on the average load of horses and mules is very much less than on carload freight.

Defendants' Exhibit No. 8, Witness March. Statement showing that empty movement on livestock cars is very much in excess of the empty movement on box cars; also shows amounts paid out on claims on livestock versus dead freight on the Santa Fe system lines.

[fol. 2197] List of Exhibits Introduced at Hearing in Docket No. 13001, Chamber of Commerce Kansas City v. Alexandria & Western Railway Company et al., at Kansas City, November 28, 1921, Included in Plaintiffs' Exhibit BB

Complainants' Exhibit No. 1, Witness Tedrow. Map showing southbound livestock situation.

Complainants' Exhibit No. 2, Witness Tedrow. (23 sheets.) Statement relative to receipts on shipments of horses, 1918, to Kansas City, Fort Worth, St. Joseph and Atlanta, and of shipments from Kansas City to Louisiana and to Texas; tabulation showing history of rates on livestock between Kansas City and Texas points; tabulation of rates on horses, carloads, between Kansas City and various points in the west and southwest; statement of rates on horses and cattle prescribed by the Commission in 48 I. C. C. 351 and 48 I. C. C. 291; Texas-Shreveport scale of horse rates; rates on horses from Kansas City to Texas points and Shreveport, La., compared with rates from Fort Worth; statement of rates on horses between Kansas City and Texas points measured by Shreveport scale; statement of rates on horses from Kansas City to Louisiana points; statement of rates on horses from Kansas City to Texas points compared with equidistant points in Colorado, Nebraska, Wyoming, New Mexico and Montana and with Shreveport scale extended; statement comparing rates on horses to Louisiana points with rates to western points, equidistant, and with Shreveport scale extended; rates on livestock between New Mexico, Arizona, Texas and Los Angeles compared with equidistant points in Texas from Kansas City; statement of rates on horses from Kansas City to Texas, through rates compared with Shreveport combination; through rates and charges on horses versus lowest combination to various southwestern points.

Complainants' Exhibit No. 3, Witness Tedrow. Statement requested by Examiner Burnside showing details of

movement of horses and mules to Atlanta, Ga., and Montgomery, Ala. (1918-1919).

[fol. 2198] Complainants' Exhibit No. 4, Witness Piper. Statement of average value of horses and mules for October and November 1919, 1920 and 1921, and statement of claims filed and collected by Piper Brothers.

Complainants' Exhibit No. 5, Witness Sweet. Comparison of prices and freight charges for month of November, 1919, 1920 and 1921.

Complainants' Exhibit No. 6, Witness Sweet. Statement of claims filed by Sweet & Piper H. & M. Company, June 1919 to June 1920.

Complainants' Exhibit No. 7, Witness Sweet. Statement of gross sales and freight charges for year July 1, 1919, to July 1, 1920.

Complainants' Exhibit No. 8, Witness Stroud. Statement of average value of mules and of freight paid by Nicoll & Stroud, August 1, 1919 to August 1, 1920.

Complainants' Exhibit No. 9, Witness Robertson. Statement of average value of mules, September and October, 1919, 1920 and 1921.

Complainants' Exhibit No. 10, Witness Tedrow. Statement of average value of horses and mules per head and per carload, 1919, 1920 and 1921.

Complainants' Exhibit No. 11, Witness Tedrow. Comparison of freight charges per car with values of horses and mules at Kansas City for three years last stated.

Defendants' Exhibit No. 12, Witness Walp. Statement showing rates applying on horses between Thackerville, Oklahoma City, Wichita and certain representative Texas points as compared with rates between Kansas City, Mo., and same points (4 sheets).

[fol. 2199] List of Exhibits Introduced at Hearing in Docket No. I. & S. 1483, Horses and Mules from Kansas City, Mo., and Wichita, Kans., to New Orleans, La., Memphis, Tenn., and Other Points at Kansas City March 29, 1922, Included in Plaintiffs' Exhibit CC

Respondents' Exhibit No. 1, Witness Nash. Blueprint map showing present and proposed rates from Kansas City and Wichita to Memphis and points in Arkansas intermediate thereto.

Respondents' Exhibit No. 2, Witness Nash. Statement of present and proposed rates as above stated in tabular form (2 sheets).

Respondents' Exhibit No. 3, Witness Nash. Comparison of rates and car-mile earnings on horses and mules from Kansas City to Chicago with rates to Memphis.

Respondents' Exhibit No. 4, Witness Nash. Statement of revenue per car-mile under proposed rates.

Respondents' Exhibit No. 5, Witness Nash. Statement of revenue per car-mile under the proposed rates compared with other rates to and from Memphis.

Respondents' Exhibit No. 6, Witness Nash. Statement of revenue per car-mile under proposed rate from Kansas City, Mo., to Memphis compared with other rates to and from Kansas City.

Respondents' Exhibit No. 7, Witness Nash. Comparison of proposed rates from Missouri River points to Memphis with scale prescribed in Hudson Mule case, also per car-mile revenues.

Respondents' Exhibit No. 8, Witness Nash. Statement of revenues per car-mile under the proposed rates from Kansas City to Memphis compared with other rates to and from St. Louis.

[fol. 2200] Respondents' Exhibit No. 9, Witness Nash. Statement of percentage relationship which rates on horses and mules bear to cattle from Kansas City to Chicago, St. Louis and Memphis.

Respondents' Exhibit No. 10, Witness Nash. Comparison of proposed rates from Kansas City and Wichita to Memphis and intermediate points in Arkansas with scale prescribed in Hudson Mule case, 63 I. C. C. 6 (2 sheets).

Respondents' Exhibit No. 11, Witness Nash. Statement of average loading per car of livestock compared with all carload freight St. Louis-San Francisco Railway, for the years 1906 to 1920, inclusive.

Respondents' Exhibit No. 12, Witness Nash. Comparison of claim payments on horses and mules and claim payments on all freight by St. L.-S. F. Ry. Co., 1921.

Respondents' Exhibit No. 13, Witness Nash. Comparison of rates and earnings on moving commodities between Kansas City and Memphis with rates and earnings on horses and mules under proposed rate from Kansas City to Memphis (2 sheets).

Respondents' Exhibit No. 14, Witness Nash. Comparison of rates to Memphis on basis of Kansas City combination using proposed rate from Kansas City versus combination via St. Louis.

Respondents' Exhibit No. 15, Witness Mock. Photostatic tabulation showing rates proposed from Kansas City, Mo., Wichita and other Kansas points to representative destinations in Louisiana contrasted with Class A rates.

[fol. 2201] Respondents' Exhibit No. 16, Witness Mock. Comparison of proposed rates set out in preceding exhibit with rates for similar distance applying in the same territory.

Respondents' Exhibit No. 17, Witness Mock. Statement of earnings per car-mile under proposed rates in territory covered by the two preceding exhibits, with earnings per car-mile in the same territory on wheat, corn and flour.

Respondents' Exhibit No. 18, Witness Mock. Statement of present rates from St. Louis to Mississippi River crossings, Memphis and south and of rates that would obtain under the Hudson Mule Case scale.

Respondents' Exhibits No. 19 to 26, Witness Mock. Statement showing train service between Kansas City and Memphis, Alexandria and Goldsboro, La., and other points on stock moving on 36-hour release and on "Red Ball Schedule".

Protestants' Exhibit No. 27, Witness Cruise. Photostatic map of Arkansas, Louisiana, Mississippi and parts of Tennessee and Alabama showing routes of livestock movement on which is printed a statement of a tabulation of present and proposed rates to typical points of destination.

Protestants' Exhibit No. 28, Witness Cruise. Statements of receipts on shipments of horses at Kansas City and Fort Worth and of shipments from Kansas City to Louisiana and to Texas during 1919; statement of Texas-Shreveport scale of horse rates and of rates on beef cattle; statement of rates on beef cattle; statement of rates on horses and cattle prescribed in 48 I. C. C. 351 and 48 I. C. C. 292; statement of traffic density for 1916 on various railroads between various points in the area involved; comparison of rates on horses to Louisiana points with rates to and from equidistant western points and with the Shreveport scale extended (2 sheets); statement of

rates on horses from Kansas City to Texas points com-
[fol. 2202] pared with equidistant points in Colorado, Nebraska, Wyoming, New Mexico, and Montana, and with the Shreveport scale extended (6 sheets); statement of rates on horses from Kansas City to Louisiana points compared with Shreveport scale, Hudson Mule case scale and proposed southbound scale with earnings per car (5 sheets); comparison of rates on horses between Kansas City and other points under horse and mule scale and class A scale (3 sheets); comparison of present and proposed horse rates measured by Shreveport and Hudson scales; letter from J. H. Tedrow, Transportation Commissioner, Kansas City Chamber of Commerce, to Secretary of the Interstate Commerce Commission and attached copies of corrected and revised sheets 2, and 5 to 17, inclusive, of Protestants' Exhibit 28.

[fol. 2203] List of Exhibits Introduced at Hearing in Docket 12358, Texas Live Stock Shippers Protective League et al. v. Director General et al., Before Examiner Oliver at Ft. Worth, Texas, January 19, 20, 21, 1922, Included in Plaintiffs' Exhibit DD

Complainants' Exhibit No. 1, Witness Pelton. History of rates on horses and mules between Texas and Oklahoma and in Texas since October 31, 1916, showing ratio of interstate rates to the Shreveport scale, the Railroad Commission of Texas scale, and a comparison of increases, single-line application (2 sheets).

Complainants' Exhibit No. 2, Witness Pelton. Statement showing relative increases in rates on horses, mules and other livestock from Kansas City to Ft. Worth, since April 6, 1917.

Complainants' Exhibit No. 3, Witness Pelton. Statement showing typical instances of increases in rates on horses and mules, Kansas City, Mo., to North Ft. Worth, Texas.

Complainants' Exhibit No. 4, Witness Pelton. Statement showing increased earnings on horses and mules from Kansas City to Ft. Worth, since April 6, 1917, with tariff authorities (3 sheets).

Complainants' Exhibit No. 5, Witness Pelton. Map covering part of territory involved with various routes.

Complainants' Exhibit No. 6, Witness Pelton. State-

ment of through rates on horses and mules to Ft. Worth, Texas, from Kansas City, St. Joseph, Mo., Wichita, Kansas, and various Oklahoma points, exceeding combination of locals (9 sheets).

Complainants' Exhibit No. 7, Witness Pelton. Through rates on horses and mules from Omaha, Nebr., to Ft. Worth, Texas, based on Oklahoma points.

Complainants' Exhibit No. 8, Witness Pelton. Through rates on horses and mules from Kansas and Missouri points to Ft. Worth, Texas, based on Oklahoma points (5 sheets).

Complainants' Exhibit No. 9, Witness Pelton. Through rates on horses and mules at Ft. Worth, Texas, exceeding combination of locals, also north-bound and south-bound rates compared.

[fol. 2204] Complainants' Exhibit No. 10, Witness Pelton. Statement showing comparison of rates on horses and mules in Kansas and between Oklahoma and Kansas points with the Shreveport scale and as between mileage scales of different lines and percentage of Shreveport scale (3 sheets).

Complainants' Exhibit No. 11, Witness Pelton. Statement showing relative earnings on horses and mules at Oklahoma half way points on shipments from Kansas City to Ft. Worth.

Complainants' Exhibit No. 12, Witness Pelton. Statement showing rates on horses and mules between Ft. Worth and various points, between other markets and the same points, and between Ft. Worth and other markets (2 sheets).

Complainants' Exhibit No. 13, Witness Pelton. Statement showing excessive jumps in rates on horses and mules from Ft. Worth, Texas, Oklahoma at border points compared with Shreveport scale at Oklahoma points.

Complainants' Exhibit No. 14, Witness Pelton. Statement showing relative earnings on horses and mules at Oklahoma dead line and at first point in Texas, also East Texas border points (2 sheets).

Complainants' Exhibit No. 15, Witness Pelton. Statement showing discrimination against Ft. Worth in favor of other markets.

Complainants' Exhibit No. 16, Witness Pelton. Statement of rates on horses and mules to Ft. Worth versus rates from Ft. Worth.

Complainants' Exhibit No. 17, Witness Pelton. Statement showing rates on horses and mules less than the Shreveport scale (2 sheets).

Complainants' Exhibits Nos. 18 to 21, Witnesses White, Rominger, Richards and Ross, respectively. List and details of various horse and mule shipments to Ft. Worth upon which reparation was claimed.

Complainants' Exhibit No. 22, Witness Pelton. Statement showing comparison of rates on horses and mules between Texas and Oklahoma with rates between Kansas-Missouri and Oklahoma.

[fol. 2205] Complainants' Exhibit No. 23, Witness Pelton. Statement showing rates on horses and mules between points in New Mexico and between points in Arizona (state and interstate) compared with Shreveport scale (2 sheets).

Complainants' Exhibit No. 24, Witness Pelton. Outline of Shreveport scale (48 I. C. C. 312) as extended territory by the I. C. C.

Complainants' Exhibit No. 25, Witness Pelton. Statement showing rates on beef cattle and hogs from Kansas City, and on hogs from Sioux Falls, S. D., to Oklahoma City, Okla., found reasonable in 62 I. C. C. 171, compared with the Shreveport scale (48 I. C. C. 283).

Complainants' Exhibit No. 26, Witness Pelton. Statement showing rates on hogs, carloads, from South St. Joseph and Kansas City, Mo., to Ft. Worth, Texas, prescribed by the I. C. C., in 62 I. C. C. 166, compared with the Shreveport scale and with northbound rates.

Complainants' Exhibit No. 27, Witness Pelton. Statement of rates to Oklahoma City, Okla., ordered by the I. C. C. in Dockets 11077 and 11240, 62 I. C. C. 171, plus rates to North Ft. Worth, Texas, also present rates and rates under the Shreveport scale (2 sheets).

Complainants' Exhibit No. 28, Witness Pelton. Extracts from Commission reports regarding similarity of transportation conditions (2 sheets).

Complainants' Exhibit No. 29, Witness Pelton. Statement showing earnings on horses and mules found reasonable in Wichita Board of Commerce v. Dir. Gen., 60 I. C. C. 542.

Complainants' Exhibit No. 30, Witness Pelton. List of Fourth Section violations (3 sheets).

Complainants' Exhibit No. 31, Witness Pelton. Statement of excessive increases in rates on livestock southbound

at Texas border points on horses and mules, cattle, calves, hogs, sheep and goats (7 sheets).

[fol. 2206] Complainants' Exhibit No. 32, Witness Pelton. Statement of rates on horses and mules from Oklahoma Interior points to Oklahoma-Texas Border points (in Texas and Oklahoma), and from Equi-Distant Texas points to the same border points in Oklahoma, showing excessive jumps on crossing the border southbound and the high ratio of the interstate to the Oklahoma intrastate rates, also the Shreveport scale, and the ratio thereof to the Oklahoma-Texas interstate rate and the Oklahoma intrastate rate.

Complainants' Exhibit No. 33, Witness Pelton. Statement of rates on horses and mules between Dodsonville and Wellington, Texas and Ft. Worth, Texas, as being charged, combination on Hollis, Okla., also copy of letter from J. F. Garvin, General Freight Agent of the M., K. & T. (2 sheets).

Complainants' Exhibit No. 34, Witness Pelton. Statement of unreasonable rates and revenue on shipments of horses and mules from interstate to Texas points.

Complainants' Exhibit No. 35, Witness Pelton. Statement of rates on horses and mules and cattle in and between Texas, Oklahoma, Kansas, Nebraska, Missouri, Arkansas, Colorado, Louisiana and New Mexico (6 sheets).

Complainants' Exhibit No. 36, Witness Pelton. Statement of receipts of horses and mules by railroads at Ft. Worth, Texas, Kansas City, Mo., Wichita, Kans., and Oklahoma City, Okla., showing ratio of other markets to Ft. Worth and percentages of increase or decrease; also three telegrams and an excerpt showing where the figures came from.

Complainants' Exhibit No. 37, Witness Pelton. Copy of letter from W. W. Miller, General Freight Agent of the M., K. & T., addressed to Mr. Pelton, relative to the combination of locals.

Complainants' Exhibit No. 38, Witness Beasley. List of shippers who bore the freight charges on shipments involved in Docket No. 12358, consigned to Ft. Worth Horse and Mule Co., at Ft. Worth, Texas (2 sheets).

Defendants' Exhibit No. 39, Witness Lynch. Statement of rates on livestock from Ft. Worth, Midland, San Antonio, Alice and Amarillo, Texas to various destinations since the year 1897 to the year 1920, with list of tariff authorities (31 sheets).

[fol. 2207] Defendants' Exhibit No. 40, Witness Lynch. Extracts from various I. C. C. reports relating to livestock rates (8 sheets).

Defendants' Exhibit No. 41, Witness Lynch. Statement showing class rates from St. Louis and Kansas City to Texas common points and Dallas-Ft. Worth group (2 sheets).

Defendants' Exhibit No. 42, Witness Lynch. Statement showing earnings which were found to be reasonable in the Commission's order in the Dallas-Ft. Worth Case No. 7628, based on moving commodities.

Defendants' Exhibit No. 43, Witness Lynch. Statement showing present revenue derived from shipments of livestock from Ft. Worth to Kansas City, compared with the revenue derived from other carload commodities moving in the reverse direction.

Defendants' Exhibit No. 44, Witness Lynch. Statement of area, population and railway mileage as a July 1, 1916, showing approximate figures for Texas common-point, Texas differential territory and total Texas as compared with Arkansas, Louisiana and Oklahoma; further compared with traffic density to show traffic and transportation conditions and value of service has not fixed the livestock rates.

Defendants' Exhibit No. 45, Witness Lynch. Statement of tonnage in tons, loaded cars and less carload traffic in tons, received and forwarded at Texas & Pacific Ry. stations in Texas during the years 1917, 1918 and 1919 (3 sheets).

Defendants' Exhibit No. 46, Witness Lynch. Memorandum of basis for rates on livestock authorized by Railroad Administration Freight Rate Authority 2797, by Mr. Paul Hastings (2 sheets).

Defendants' Exhibits No. 47 and No. 48, Witness Swenson. Statement of receipts of livestock at Chicago, Ill., St. Paul, Minn., Omaha, Nebr., St. Joseph and Kansas City, Mo., Wichita, Kans., Oklahoma City, Okla., Denver, Colo., and Sioux City, Iowa, and St. Louis, Mo., for years 1903 to 1920, inclusive (11 sheets).

[fol. 2208] Defendants' Exhibit No. 49, Witness Swenson. Statement of receipts of Livestock at Ft. Worth Stock Yards during years 1902 to 1920, inclusive.

Defendants' Exhibits Nos. 50 and 51, Witness Swenson. Statement of livestock forwarded from Chicago, Ill., St. Paul, Minn., Omaha, Nebr., St. Joseph and Kansas City,

Mo., Wichita, Kans., Oklahoma City, Okla., Denver, Colo., Sioux City, Iowa, and St. Louis, Mo., for years 1903 to 1920, inclusive. (Ex. 50, 9 sheets; Ex. 51, 2 sheets.)

Defendants' Exhibit No. 52, withdrawn.

Defendants' Exhibits Nos. 53 and 54, Witness Swenson. Department of Agriculture estimate of number of head and valuation of livestock on farms and elsewhere, for years 1903 to 1921, inclusive. (Ex. 53, 3 sheets; Ex. 54, 3 sheets.)

Defendants' Exhibit No. 55, Witness Swenson. Statement showing Dept. of Agriculture estimates of livestock on farms and ranges of the United States (1920 figures revised) (4 sheets).

Defendants' Exhibit No. 56, Witness Swenson. Statement of receipts, also total valuation, valuation per kind, and average valuation per head of livestock at Union Stock Yards, Chicago, for the years 1900 to 1920, inclusive.

Defendants' Exhibit No. 57, Witness Swenson. Statement of area and population 1920 census of southwestern states; also Dept. of Agriculture estimate of number of head of livestock on farms and elsewhere. (2 sheets.)

Defendants' Exhibit No. 58, Witness Swenson. Statement showing freight traffic density of railroads in the United States, for railroads in C. F. A. territory, in Missouri, of ten southwestern lines, of fourteen Texas carriers; also freight density of Texas to the United States, Eastern and Western Districts, etc. (6 sheets.)

Defendants' Exhibit No. 59, Witness Swenson. Comparative statement of per ton and car mile earnings on livestock versus other freight from Kansas City, Mo., Oklahoma City, Okla., Dodge City and Wichita, Kans., to Ft. Worth, Texas.

Defendants' Exhibit No. 60, Witness Swenson. Statement showing present north and southbound rates on all kinds of livestock, distances, revenue per 36 ft. car mile between Kansas City, St. Louis, Mo., Chicago, Ill., and Denver Colorado and points shown (36 sheets).

[fol. 2209] Defendants' Exhibit No. 61, Witness Swenson. Statement showing rates on various kinds of livestock between principal points in Arkansas and Oklahoma and the various markets (21 sheets).

Defendants' Exhibit No. 62, Witness Swenson. Comparative statement of class rates, commodity rates, mileage rates on cattle, carloads, livestock rates in high and low

traffic density territories; also comparative statement of livestock rates with first-class rates and average of ten classes in high and low traffic density territories. (9 sheets.)

Defendants' Exhibit No. 63, Witness Swenson. Comparative statement showing cost per thousand gross ton miles, also per thousand net ton miles (4 sheets).

Defendants' Exhibit No. 64, Witness Swenson. Statement of operating expenses and revenues; also comparative statement of annual operating ratios for representative lines operating in southwestern territory (3 sheets).

Defendants' Exhibit No. 65, Witness Swenson. Extracts from opinion in I. & S. Docket No. 137, 26 I. C. C. 47-51 (4 sheets).

Defendants' Exhibit No. 66, Witness Swenson. Comparative statement of livestock tonnage versus all other freight handled by Texas carriers for years 1910 to 1918, inclusive.

Defendants' Exhibit No. 67, Witness Dowlin. Statement showing statistical information with respect to movement of livestock, c. l., over Rock Island Lines during 1917-1920, inclusive, as compared with various other products.

Defendants' Exhibit No. 68, Witness Dowlin. Statement showing average loading per car of carload freight handled over Rock Island Lines during 1917-1920.

Defendants' Exhibit No. 69, Witness Dowlin. Statement showing earnings from transportation of live stock moving over Rock Island Lines during 1919 and 1920, as compared with earnings from other commodities.

Defendants' Exhibit No. 70, Witness Dowlin. Statement showing ratio of movement of empty cars to loaded cars over Rock Island Lines during October, 1915.

[fol. 2210] Defendants' Exhibit No. 71, Witness Dowlin. Statement of freight train car miles, also loaded and empty car miles by classes of cars (2 sheets).

Defendants' Exhibit No. 72, Witness Dowlin. Statement showing number of cars of livestock and cars of all other commodities handled via C., R. I. & P. Ry., 1918, 1919 and 1920.

Defendants' Exhibit No. 73, Witness Dowlin. Statement showing value of transportation issued by C., R. I. & P. Ry. to attendants accompanying shipments of livestock during the year 1920.

Defendants' Exhibit No. 74, Witness Dowlin. Statement showing loss and damage payments by Rock Island lines for the years 1917-1920, inclusive, comparing the payments resulting from transportation of livestock with payments resulting from transportation of other freight.

Defendants' Exhibit No. 75, Witness Dowlin. Statement showing revenue earned on livestock, the amount paid to satisfy claims, and per cent of claim payments to revenue earned on livestock compared with per cent of claim payments to revenue earned on all other freight on 12 southwestern roads from one to eight years (2 sheets).

Defendants' Exhibit No. 76, Witness Dowlin. Statement showing number of cars of livestock handled by C., R. I. & P. Ry., during 1906 to 1920, inclusive.

Defendants' Exhibit No. 77, Witness Dowlin. Statement of income account for the Rock Island Lines for 1917 to 1920 and six months in 1921.

Complainants' Exhibits Nos. 78 to 83, Witness Yount, etc. Statement of shipments of horses and mules to Ft. Worth, Texas upon which reparation was claimed (10 sheets).

Complainants' Exhibit No. 84. Statement of claims paid on livestock, per cent of freight charges in I. & S. 958.

[fol. 2211] List of Exhibits Introduced at Hearing in Docket No. 13627, Burnett-Yount Horse & Mule Company et al. v. Abilene & Southern Railway Company et al., at Fort Worth, Texas, July 20, 21 and 22, 1922, Included in Plaintiffs' Exhibit FF

Complainants' Exhibit No. 1, Witness Pelton. (4 sheets.) Blueprint map showing Louisiana territory; statement entitled "The Alexandria, La., Situation"; from Fort Worth, Tex., via Shreveport showing distances and rate authorities; statement entitled "The Natchez Situation"; from Fort Worth, Tex.; "The Vicksburg, Miss., Situation" (compared with the Alexandria-Natchez Situation).

Complainants' Exhibit No. 2, Witness Pelton. Statement showing rates on horses and mules between Arizona-New Mexico-Texas interstate and intrastate points.

Complainants' Exhibit No. 3, Witness Pelton. Statement of rates on horses and mules and cattle between New Mexico points and Fort Worth, Tex., showing horse and mule percentage of the cattle rates and of the Shreveport scale; also revenue on cattle and horses and mules.

Complainants' Exhibit No. 4, Witness Pelton. Statement of rates on horses and mules between Oklahoma City, Wichita, Kans., and Fort Worth, Tex., and points in New Mexico.

Complainants' Exhibits Nos. 5 to 17 inclusive, divers witnesses. Statements of freight payments made upon horse and mule shipments. Material only for reparation purposes.

Defendants' Exhibit No. 18, Witness Swenson. Statement of scale proposed by railroads for horses and mules with statement of earnings.

Defendants' Exhibit No. 19, Witness Swenson. Statement of class rates from Kansas City and Denver to various western and southwestern points showing percentage of class rates.

[fol. 2212] Defendants' Exhibit No. 20, Witness Swenson. Statement of proposed group adjustment with examples and rate references.

Defendants' Exhibit No. 21, Witness Witcher. Statement of freight density of railroads in years for 1906 to 1920; freight traffic density in C. F. A. territory; freight traffic density in Missouri; freight traffic density of southwestern lines; freight traffic density of 14 Texas carriers; percentage relationship of freight density of Texas roads to eastern, western and southern districts. (6 sheets.)

Defendants' Exhibit No. 22, Witness Witcher. Statement of earnings found reasonable in Commission Docket No. 7628 based on commodities, minimum weight and approximate mileage, rates and weights effective July 15, 1922.

Defendants' Exhibit No. 23, Witness Witcher. Statement making comparison of present rates and earnings on grain from certain Oklahoma points to Fort Worth and Galveston, Tex., for export, with rates and earnings between the same points based on mileage scale fixed by the Commission in Docket No. 12244.

Defendants' Exhibit No. 24, Witness Witcher. Statement comparing rates and earnings on grain from representative Kansas points to Fort Worth and Galveston for export, with rates and earnings between the same points based on scale fixed by the Commission in Docket No. 12244.

Defendants' Exhibit No. 25, Witness Clark: Comparison of rates on various commodities between certain stated points.

Defendants' Exhibit No. 26, Witness Dowlin. Comparison of claim payments on horses and mules with payments on other freight traffic, M-K-T of Texas, for 1920 and 1921, [fol. 2213] Defendants' Exhibit No. 27, Witness Dowlin. Statement of number of cars, revenue and claim payments on horses and mules compared with cattle and all other commodities in carloads, M-K-T Railway, 1921.

Defendants' Exhibit No. 28, Witness Dowlin. Comparison of claim payments on horses and mules with claim payments on all freight St. L.-S. F. Ry. for 1921.

Defendants' Exhibit No. 29, Witness Dowlin. Statements showing C. B. & Q. R. R. loss and damage claim payments, carload business during 1920, divided between commodity groupings, showing revenue and percent of claim payments to revenue.

Defendants' Exhibit No. 30, Witness Plumb. Statement showing comparison of average loading of horses and mules and other kind of livestock during 1910, 1911, 1920 and 1921.

Complainants' Exhibit No. 31, Witness Pelton. Extracts from reports of the Supreme Court of Oklahoma in specified cases.

Complainants' Exhibit No. 32, Witness Pelton. Comparison of horse and mule rates from Colorado, Nebraska, Wyoming, New Mexico and South Dakota points to Kansas City with the Shreveport scale.

Complainants' Exhibit No. 33, Witness Pelton. Statement of receipts on horses and mules by railroad at Fort Worth, Kansas City, Wichita and Oklahoma City.

Complainants' Exhibit No. 34, Witness Pelton. Statement of scale of rates proposed by complainants.

Complainants' Exhibit No. 35, Witness Pelton. Comparison of rates of progression.

[fol. 2214] List of Exhibits Introduced in Evidence at Hearing in I. & S. Docket No. 2389, In the Matter of, Rates on Horses and Mules to, From or Between Southwestern Points at Fort Worth, Tex., May 6, 1925, and at Kansas City, Mo., May 19, 1925. Included in Plaintiffs' Exhibit GG

Respondents' Exhibit No. 1, Witness Lynch. Blueprint map of State of Texas showing counties with boundaries of Texas common point territory, with statement of area and population of each county.

Respondents' Exhibit No. 2, Witness Lynch. Statement showing present rates on horses and mules from St. Louis, Kansas City and Wichita to representative points in Texas in differential territory, also suspended rates and distances west of Texas common point territory and other data (5 sheets).

Respondents' Exhibit No. 3, Witness Lynch. Statement of present rates from Texas differential territory on T. & P. to St. Louis, Kansas City and Wichita compared with suspended rates and through class A rates (3 sheets).

Respondents' Exhibit No. 4, Witness Lynch. Statement of differentials applying on a number of commodities between Texas points and proposed differentials on horses and mules.

Respondents' Exhibit No. 5, Witness Lynch. Statement of population, per square mile and area of Texas counties served by the T. & P.

Respondents' Exhibit No. 6, Witness Lynch. Statement of tonnage received and forwarded at T. & P. stations in 1917.

Respondents' Exhibit No. 7, Witness Lynch. Statement of loaded cars received and forwarded at T. & P. stations in 1918 and 1919.

Respondents' Exhibit No. 8, Witness Lynch. Statement of less-than-carload traffic in tons, T. & P. stations in Texas, 1918 and 1919.

[fol. 2215] Respondents' Exhibit No. 9, Witness Lynch. Statement of loaded cars received and forwarded at T. & P. stations in Texas, 1922.

Respondents' Exhibit No. 10, Witness Lynch. Statement of less-than-carload tonnage at T. & P. stations in Texas, 1922.

Respondents' Exhibit No. 11, Witness Lynch. Statement of total tonnage received and forwarded at T. & P. stations in Texas, April and October, 1922.

Respondents' Exhibit No. 12, Witness Hamilton. Statement of receipts on horses and mules in various markets in the southwest, 1922 and 1923.

Respondents' Exhibit No. 13, Witness Hamilton. Statement showing population and area, 1920, in counties in New Mexico on Southern Pacific Lines compared with population and area in Texas common point territory.

Respondents' Exhibit No. 14, Witness Hamilton. Statement of receipts and expenditures by the Pacific System in New Mexico counties, 1923 (2 sheets).

Respondents' Exhibit No. 15, Witness Hamilton. Rates on beef cattle applicable in Texas common point territory versus rates into Cactus, Ariz. (3 sheets).

Respondents' Exhibit No. 16, Witness Hamilton. Rates on horses from New Mexico and Texas, Pacific System points, to Oklahoma City compared with rates for same distance in I. C. C. Docket No. 12358 (2 sheets).

[fol. 2216] Respondents' Exhibit No. 17, Witness Hamilton. Statement of current rates on horses between Kansas City, Mo., and El Paso, also stations in New Mexico east of El Paso on the Pacific System, and stations in New Mexico on the Rock Island compared with rates prescribed in I. C. C. Docket No. 12358 (2 sheets).

Respondents' Exhibit No. 18, Witness Hamilton. Statement of present rates on horses between Wichita and El Paso and stations in New Mexico on the Pacific System compared with I. C. C. Docket No. 12358 rates (2 sheets).

Respondents' Exhibit No. 19, Witness Hamilton. Statement of present rates on horses between St. Louis and above-stated southwestern points compared with Docket No. 12358 rates (2 sheets).

Respondents' Exhibit No. 20, Witness Hamilton. Statement of present horse rates between Deming, N. Mex., Oklahoma City, Wichita, Kansas City and St. Louis compared with rates for equal distances prescribed in I. C. C. Docket No. 12358.

Respondents' Exhibit No. 21, Witness Gillespie. Map of Santa Fe System showing differential territory circled with blue pencil.

Respondents' Exhibit No. 22, Witness Gillespie. Statement of freight traffic density, Slaton Division branch line for 1924.

Respondents' Exhibit No. 23, Witness Gillespie. Statement of short-line distance and present and proposed rates between New Mexico points to Fort Worth, Oklahoma City,

Wichita, Kansas City, St. Joseph and St. Louis on horses and mules (2 sheets).

Respondents' Exhibit No. 24, Witness Gillespie. Statement of distance and proposed rates on horses and mules, earnings per car-mile from New Mexico points to Kansas City compared with car revenue and per mile earnings on commodities from Kansas City and St. Louis.

[fol. 2217] Respondents' Exhibit No. 25, Witness Dowlin. Blueprint map of New Mexico showing by counties the ratio of population per square mile.

Respondents' Exhibit No. 26, Witness Dowlin. Photostatic map showing Rock Island lines west of the Missouri River.

Respondents' Exhibit No. 27, Witness Dowlin. Statement showing present rates on horses and mules to and from St. Louis, Kansas City, Oklahoma City and Wichita to and from points in Texas and New Mexico on the Rock Island and Southern Pacific lines, also suspended rates and various rate comparisons (9 sheets).

Respondents' Exhibit No. 28, Witness Dowlin. Statement showing distances from New Mexico points to Fort Worth and Wichita; length of haul in higher-rated territory, present horse and mule rates compared with present joint through rates to Wichita and to Fort Worth and rates figured under Docket No. 12358 scale and under carriers' proposal; present and proposed joint through rates to Fort Worth, Oklahoma City, Wichita, Kansas City and St. Louis (6 sheets).

Respondents' Exhibit No. 29, Witness Dowlin. Statement of proposed rates and earnings from New Mexico points to Oklahoma City, Fort Worth, Wichita, Kansas City and St. Louis (5 sheets).

Respondents' Exhibit No. 30, Witness Dowlin. Statement showing number of cars of various commodities handled, tonnage, ton-miles, car miles, average load, average haul, bulk earnings, per car-mile earnings on the Rock Island, loss and damage claim payments, their ratio to revenue earned; average per-car rates, loss and damage claim payments per car (2 sheets).

Interveners' Exhibit No. 31, Witness Tanner. Statement showing population by counties in Texas differential territory (2 sheets).

[fol. 2218] Interveners' Exhibit No. 32, Witness Tanner. Statement of Texas interstate and intrastate horse and mule rates to and from certain differential territory points compared with suspended Texas interstate rates to and from the same points in differential territory and respondents' proposed rates to and from El Paso (2 sheets).

Interveners' Exhibit No. 33, Witness Tanner. Statement of present Texas interstate rates on horses to and from Texas common point territory compared with Texas suspended rates to certain differential territory points (2 sheets).

Interveners' Exhibit No. 34, Witness Tanner. Statement of proposed horse and mule rates and revenue therefrom to and from El Paso for given distances compared with charges for similar shipments under existing rates.

Interveners' Exhibit No. 35, Witness Tanner. Statement comparing existing interstate beef cattle rates to or from certain differential points and with proposed rates to and from El Paso (2 sheets).

Interveners' Exhibit No. 36, Witness Tanner. Statement of interstate mileage rates to or from differential territory points on commodities carrying no differentials compared with suspended horse rates to or from certain differential territory points and with proposed rates to and from El Paso for equal distances.

Interveners' Exhibit No. 37, Witness Tanner. Statement showing maximum Texas interstate rates on various commodities to or from points in differential territory compared with suspended horse and mule rates for equal distances from El Paso.

[fol. 2219] Interveners' Exhibit No. 38, Witness Tanner. Statement making comparison of suspended interstate rates on horses to or from differential territory and of proposed rates to and from El Paso with rates between El Paso and points in Arizona and New Mexico, and also with rates between Denver, Colo., and Wyoming points (2 sheets).

Interveners' Exhibit No. 39, Witness Tanner. Statement showing representative examples of present suspended rates and of respondents' proposed rates on horses from El Paso, Pecos and Alpine to Wichita, Kans., and Oklahoma City compared with present rates from San Antonio and New Mexico points to same destinations (2 sheets).

Interveners' Exhibit No. 40, Witness Tanner. Statement showing representative examples of existing, suspended, and proposed rates on horses from Wichita, Kansas City and Oklahoma City to El Paso, Pecos and Alpine compared with existing rates from same points of origin to El Paso and New Mexico points (2 sheets).

Interveners' Exhibit No. 41, Witness Tanner. Statements comparing respondents' proposed rates on horses to and from El Paso and differential points with existing mileage rates between Texas common points and interstate points; also with existing mileage rates between points in western and Mountain-Pacific territory.

Interveners' Exhibit No. 42, Witness Tanner. Comparisons of suspended rates on horses to and from differential territory points and respondents' proposed rates to and from El Paso with existing rates between points in Mountain Pacific territory for similar distances.

Interveners' Exhibit No. 43, Witness Tanner. Statement of comparisons of present rates on beef cattle between El Paso, Pecos and Alpine, Tex., and Wichita, Kansas City and Oklahoma City, with present rates and respondents' proposed rates to and from same points (2 sheets).

[fol. 2220] Interveners' Exhibit No. 44, Witness Tanner. Statement of class A rates from Kansas City and St. Louis to various Texas points compared with existing and proposed horse and mule rates to and from the same points.

Interveners' Exhibit No. 45, Witness Tanner. Comparison of existing interstate mileage rates on horses applicable between El Paso and Kansas and Oklahoma points with proposed rates between El Paso and interstate points.

Protestants' Exhibit No. 46, Witness Pelton. Statement showing revenue per ton-mile, operating ratio expenses to revenue, ton miles of revenue in Texas differential territory and Texas common point territory.

Protestants' Exhibit No. 47, Witness Pelton. Statement of rates and revenue on horses and mules between Kansas City and points in New Mexico, Arizona and California; from Kansas points to certain Nebraska points; Arizona and New Mexico intrastate and interstate. (4 sheets.)

Protestants' Exhibit No. 48, Witness Pelton. Statement of percentage of beef and cattle rates and horse and mule rates from New Mexico points to Fort Worth; also of horse and mule combination rates, beef and cattle through rates, and effect of differential rates.

[fol. 2221] List of Exhibits Introduced at Hearings in Horse and Mule Rates in the Southwest, 1924, Including Texas Live Stock Shippers Protective League et al. v. Director General et al., Docket No. 12358; Ross Bros. Horse and Mule Co. et al. v. Union Pacific R. R. Co. et al., Docket No. 13619; Burnett-Yount Horse and Mule Co. et al. v. Abilene & Southern Ry. Co. et al., Docket No. 13627, Before Examiner Eshelman at Ft. Worth, Texas, May 6, 7 and 8, 1925, and at Topeka, Kans., on May 15 and 16, 1925, Included in Plaintiffs' Exhibit IIII

Complainants' Exhibits Nos. A-85 to A-91. Statement of shipments of horses and mules upon which reparation was claimed (68 sheets).

Complainants' Exhibit No. A-92, Witness Henderson. Assignment for collection of reparation.

Complainants' Exhibit No. B-93, Witness Corp. Statement showing density of traffic Class I roads in Kansas for year 1923.

Complainants' Exhibit No. B-94, Witness Corp. Statistics of rail line operations in South Dakota for year 1923.

Complainants' Exhibit No. B-95, Witness Corp. Statement showing density of traffic in Texas for year 1923, Class I roads.

Complainants' Exhibit No. B-96, Witness Corp. Statistics of rail line operations within the State of Nebraska for year 1923.

Complainants' Exhibits Nos. B-97 to B-101, Witness Corp. Statement showing density of traffic on the Union Pacific R. R., Missouri Pacific R. R., Chicago, R. I. & P. R. R., A., T. & S. F. Ry., and the St. Louis-S. F. Ry. in Kansas, for operating divisions shown west of Kansas City for the year 1923 (7 sheets).

Complainants' Exhibit No. B-102, Witness Corp. Statement showing rates to Kansas City from Nebraska stations on the Mo. Pac., compared with present and proposed rates to Kansas City from Kansas points for similar distances on the A., T. & S. F. (2 sheets).

Complainants' Exhibit No. B-103, Witness Corp. Statement showing traffic density on the Mo. Pac. compared with density on the A., T. & S. F. for year 1923.

[fol. 2222] Complainants' Exhibit No. B-104, Witness Corp. Statement showing rates on horses and mules, carloads, from Jansen, Nebr., to Wichita, compared with pro-

posed scale from intermediate points in Kansas on the C., R. I. & P. to Wichita.

Complainants' Exhibit B-105, Witness Corp. Statement showing rates from points in the C., B. & Q. in Missouri to Kansas City, compared with rates from points in Kansas on the Union Pacific R. R. to Kansas City for similar distances.

Complainants' Exhibit No. B-106, Witness Corp. Statement showing traffic density on the C., B. & Q. in Missouri compared with density on the A., T. & S. F. in Kansas for year 1923.

Complainants' Exhibit No. B-107, Witness Corp. Statement showing result of application of proposed scale from points on C., R. I. & P. in Kansas to Wichita, Kansas.

Complainants' Exhibit No. B-108, Witness Corp. Statement showing rates from Kansas points to Wichita proposed rates Nebraska scale and percent proposed is of present rates.

Complainants' Exhibit No. B-109, Witness Corp. Statement showing Kansas single line scale and also Nebraska intrastate scale, and South Dakota, Northern Nebraska and other than Northern Nebraska single line scales compared with the proposed scale, showing percentage increase of proposed scale over scales referred to.

Complainants' Exhibit No. B-110, Witness Corp. Copy of application of the A., T. & S. F. Ry. Co. to the Public Service Comm. of Kansas, to publish certain rates.

Complainants' Exhibit No. B-111, Witness Corp. Copy of order of the Kansas Commission approving the rates petitioned for.

Interveners' Exhibit No. B-112, Witness Nash. Statement showing steady decrease in receipts of horses and mules by St. Joseph Horse & Mule Co., since 1918, also decline in prices.

Interveners' Exhibit No. B-113, Witness Lysle. Comparison of scale on horses and mules prescribed in Docket No. 12358 with other similar scales prescribed by the Commission or voluntarily established by carriers.

[fol. 2223] Interveners' Exhibits Nos. B-114 and B-115, Witness Lysle. Statement showing a comparison of Rates on horses and mules, carload, from St. Louis-San Francisco Ry. stations and Missouri Pacific stations in Kansas and southern Missouri to Memphis, Tenn., in effect prior to and on April 20, 1925, under Docket 12358, with the present

rates to Kansas City and St. Louis, Mo., and those produced by the scale prescribed in Docket 12358 (2 sheets).

Complainants' Exhibit No. 116, Witness Tedrow. Statements of horse and mule receipts at all public stockyards and principal markets from 1900 to 1923, and graphs illustrating the same; statements of number and value of horses and mules on farms and farm prices, 1900-1924, and graphs illustrating the same; statement of exports and prices on horses and mules, 1900-1923; statement of Kansas City horse and mule receipts, 1912-1924; month farm price per head, horses and mules, averaged as to separate states; map showing Missouri, Kansas and Colorado territory involved; statement of yearly receipts separated as to various states, 1912-1924; statement of mileage scales on horses and mules; map of southwestern territory showing areas taking various rate scales; statement showing Nebraska scale progressed on basis of South Dakota scale; graph showing measure and progression of various horse and mule scales; map of Colorado, Kansas and Missouri showing locations of various points used in connection with rate testimony; statements of present and proposed rates on horses and mules from Kansas, Colorado and Missouri, with comparisons with the Shreveport, Dimmit-Caudle-Smith, Nebraska and South Dakota scales; graph showing location of certain Colorado, Nebraska and Kansas points referred to in preceding and following exhibits; statement showing effect of mileage scale from Kansas, Colorado, Oklahoma and Texas. (32 sheets.)

Complainants' Exhibit B-117, Witness Tedrow. Statement showing density of traffic north and south of the Missouri River in the State of Missouri, 1923.

Interveners' Exhibit No. B-118, Witness Bazan. Statement showing rates published and rate of progression in scale which over 100 miles shows rates prescribed by the Commission and rates under 100 miles established by carriers; also incorrectness of rates published for distances up to 100 miles and what the rates properly should be under the rate of progression prescribed for over 100 miles. (2 sheets.)

[fol. 2224] Interveners' Exhibit No. B-119, Witness Bazan. Statement showing present rates from A., T. & S. F. Kansas stations to Wichita with rates from same stations produced

by using scale prescribed in Docket 12358, also increases resulting (2 sheets).

Interveners' Exhibit No. B-120, Witness Bazan. Statement of comparison of rates on horses and mules presented in I. C. C. Docket 12358 et al., with beef cattle rates under southwestern scale for same distances showing percentages horses and mules of beef cattle.

Interveners' Exhibit No. B-121, Witness Bazan. Statement showing charges per car on horses and mules compared with charges per car on beef cattle from stations on the A., T. & S. F., Missouri Pacific, C., R. I. & P., and Union Pacific in Kansas to Wichita; also per cent total charges on horses and mules of those on beef cattle. (4 sheets.)

Interveners' Exhibit No. B-122, Witness Bazan. Statement showing result of application of 12358 scale as published and as should be to points on the A., T. & S. F. from Coolidge, Kans., to Wichita, also showing per cent present charges would be increased.

Interveners' Exhibit No. B-123, Witness Bazan. Statement showing per cent charges in dollars and cents per car on horses and mules, carload, under the Nebraska scale are of the rates and charges per car on beef cattle under the same scale.

Interveners' Exhibit No. B-124, Witness Bazan. Statement comparing rates on beef cattle from Kansas stations on the C., R. I. & P., A., T. & S. F., and U. P., to Kansas City, with rates from Nebraska stations on the C., B & Q., and U. P. to Kansas City and stations on the U. P. in Nebraska to Omaha, Nebr., and showing totals and per cents Kansas rates are of Nebraska rates and respective amounts Kansas over Nebraska and Nebraska over Kansas, showing that Kansas and Nebraska rates are substantially the same in the aggregate. (4 sheets.)

Interveners' Exhibit No. B-125, Witness Bazan. Statement showing similarity of charges per car on horses and mules from Kansas points to Wichita and Kansas City for hauls approximately equi-distant (2 sheets.)

Interveners' Exhibit No. B-126, Witness Bazan. Statement comparing charges per car on horses and mules under 12358 scale with scale ordered in by the Commission in the Nebraska case from southern Nebraska to Missouri River points, showing amounts under the 12358 scale as published

and, in addition, as should be and the per cent the 12358 scale is of the Nebraska scale.

[fol. 2225] Interveners' Exhibit No. B-127, Witness Bazan. Map of Kansas with points used in the next exhibit encircled.

Interveners' Exhibit No. B-128, Witness Bazan. Statement showing effect of making applicable within Kansas the scale of rates on horses and mules prescribed in Docket 12358, by a showing of present spreads of points in adjoining states over Kansas border points on same lines of railway; those in effect at present time and numerous fourth section violations which would be created (2 sheets).

Interveners' Exhibit No. B-129, Witness Bazan. Statement comparing charges on horses and mules from Colorado stations on the C., R. &. & P. with rates on horses and mules from Nebraska station on the U. P.

Interveners' Exhibit No. B-130, Witness Fitzpatrick. Statement showing census figures, 1920, showing horses and mules on farms and ranges in Kansas, Nebraska and South Dakota.

Interveners' Exhibits Nos. B-131 to B-134, Witness Fitzpatrick. Statements comparing scales prescribed in South Dakota v. C. & N. W. Ry., 77 I. C. C. 461, Nebraska Livestock Case, 89 I. C. C. 444, and in 47 I. C. C. 287 (Dimmit-Caudle-Smith scale), respectively, covering livestock with scale proposed in 93 I. C. C. 479, for application in Kansas, Colorado, and Missouri areas (4 sheets).

Interveners' Exhibit No. B-135, Witness Fitzpatrick. Statement showing rates from stations in Kansas and Colorado to St. Joseph, Mo., from 1918 to 1925 and rates proposed; also average prices of horses and mules for January of each year 1919 to 1925.

Interveners' Exhibit No. B-136, Witness Fitzpatrick. Statement showing actual short line distances and single line short line distances from representative points in Kansas and Colorado as shown in Ex. B-135; also present and proposed rates from these points to St. Joseph and Kansas City.

Defendants' Exhibit No. B-137, Witness Clark. Page 25 of 54th Annual Livestock Report showing total receipts of cars and total shipments of cars for 1924.

Defendants' Exhibit No. B-138, Witness Clark. Page 13 of 32nd Annual Report of Receipts and Shipments of Live-

stock at St. Joseph Stock Yards for year 1924, showing total receipts and shipments of livestock for 1924.

[fol. 2226] Defendants' Exhibit No. B-139, Witness Clark. Map of southern portion of Missouri and eastern portion of Kansas, Oklahoma, and northern portion of Arkansas.

Defendants' Exhibit No. B-140, Witness Clark. Statement of rates on horses and mules from various Missouri points to St. Louis, Mo., National Stock Yards, Ill., and Kansas City, Mo.

Defendants' Exhibit No. B-141, Witness Clark. Statement of rates on cattle and hogs from various Missouri points to National Stock Yards, Ill.

Defendants' Exhibit No. B-142, Witness Clark. Statement of rates on wheat, corn and oats, packing-house products and fresh meats from various Missouri points to St. Louis and Kansas City.

Defendants' Exhibit No. B-143, Witness Clark. Statement showing rates on various commodities to St. Louis and Kansas City from various Missouri points.

Defendants' Exhibit No. B-144, Witness Clark. Statement showing rates on various commodities to various Missouri points from St. Louis.

Defendants' Exhibit No. B-145, Witness Clark. Statement showing rates, absorptions and net revenues on horses and mules from Kansas City Stock Yards to East St. Louis.

Defendants' Exhibits Nos. B-146 and B-147, Witness Clark. Statement showing rates on horses and mules from various points in Missouri to Kansas City and National Stock Yards, Ill., as compared to various rates for equal distances as prescribed by the I. C. C.

Defendants' Exhibit No. B-148, Witness Clark. Statement showing percentage relation between cattle rates and rates on horses moving in central freight association territory.

Defendants' Exhibit No. B-149, Witness Clark. Statement showing percentage relation between rates on cattle in southwestern territory (Director General Scale) and rates on horses and mules as prescribed by the Commission in Docket 13627.

[fol. 2227] Defendants' Exhibit No. B-150, Witness Clark. Statement of rates on horses and mules between Ft. Worth, Texas, and Beaumont, Texas, and various points in Missouri, Arkansas, Kansas and Tenn.

Defendants' Exhibit No. B-151, Witness Clark. Statement of intrastate distance rates between points in Missouri, Kansas, Nebraska, Colorado, Iowa and Illinois, on horses and mules, cattle and hogs.

Defendants' Exhibit No. B-152, Witness Clark. Statement of rates on horses and mules, cattle and hogs from Wichita, Kans., and various Missouri points to National Stock Yards, Ill., Chicago, Ill., and Memphis, Tenn.

Defendants' Exhibit No. B-153, Witness McDonald. Statement showing freight traffic density on the A., T. & S. F. in states of Kansas, Oklahoma and Texas.

Defendants' Exhibit No. B-154, Witness Gillispie. Map of the Santa Fe system showing the horse and mule markets in the territory involved.

Defendants' Exhibits No. B-155 to Nos. B-158, Witness Gillispie. Statements showing present and proposed rates on horses and mules; also earnings per car mile from representative points in Kansas and eastern Colorado to Kansas City and St. Louis, Mo., as compared with car revenue and earnings on other moving commodities. (4 sheets.)

Defendants' Exhibit No. B-159, Witness Gillispie. Statement showing the distances, present and proposed rates on horses and mules, also earnings per car mile from representative points in Kansas and Colorado to Wichita, applicable on interstate traffic.

Defendants' Exhibit No. B-160, Witness Gillispie. Statement showing the rates in effect prior to April 20, on horses and mules, from representative Kansas and Oklahoma border points as compared with rates published from Oklahoma border points to Kansas City and St. Louis.

Defendants' Exhibit No. B-161, Witness Gillispie. Statement showing the present mileage rates on horses and mules, per 36 ft. 7 in. car, between Kansas points as compared with proposed scale in Docket 12358 (2 sheets).

Defendants' Exhibit No. B-162, Witness Gillispie. Statement showing the low carload weight loading of livestock as compared with other commodities (2 sheets).

[fol. 2228] Defendants' Exhibit No. B-163, Witness Gillispie. Statement showing average tons per car for years 1917 and 1923 on freight revenue traffic handled by A., T. & S. F. and per cent thereof.

Defendants' Exhibit No. B-164, Witness Gillispie. Comparative statement of loss and damage claim payments on

livestock and all freight made by the A., T. & S. F. for years 1917 to 1923, inclusive.

Defendants' Exhibit No. B-165, Witness Gillispie. Statement showing the percentage ratio of empty to loaded mileage performed by the A., T. & S. F. for years 1914, 1915 and 1916.

Defendants' Exhibit No. B-166, Witness Rawlings. Statement showing rates based on scale in Docket 12358 and per car mile earnings on horses and mules, c. l. versus per car charges and earnings per car mile on other moving commodities between Kansas City, St. Joseph, St. Louis, Mo., Wichita, Kansas and various points in Kansas (9 sheets).

Defendants' Exhibit No. B-167, Witness Frankenberger. Statement of present rates on horses and mules from points in Colorado on U. P. R. R. to Kansas City compared with rates prescribed from points in Nebraska to Omaha, Nebr., 89 I. C. C. 444, and with rates prescribed in 93 I. C. C. 479; comparison of rates on horses and mules prescribed by the I. C. C. in 93 I. C. C. 479, with Colorado state distance and Colorado-Kansas interstate scale on horses and mules; comparisons of rates and per car charges on horses and mules from points on U. P. in Colorado to Kansas City and St. Louis, Mo., with rates and per car charges on wheat and corn, and with rates and per car charges prescribed on horses and mules by 93 I. C. C. 479; comparison of rates and per car charges on horses and mules from Denver, Colo., to Missouri River and St. Louis, Mo., with rates and per car charges on various other commodities; statement showing receipts of livestock at Kansas City for year 1924, via various lines. (6 sheets.)

[fol. 2229] List of Exhibits Introduced at Hearing in Docket No. 12146, The National Live Stock Shippers League et al. v. Atchison, Topeka & Santa Fe Ry. Co. et al., at Denver, Colo., June 1-2, 1921, Before Examiner Disque, Included in Plaintiffs' Exhibit II

Complainants' Exhibit No. 1, Witness Cowan. Pamphlet copy of the Report of James A. Seddon, Special Master, in Missouri, Kansas & Texas Ry. Co. et al. v. I. C. C.

Complainants' Exhibit No. 2, Witness McClure. Statement showing lambs shipped from Cadwell, Idaho.

Complainants' Exhibit No. 3, Witness McClure. Statement showing present date rates on wool in the grease, from

a few wool-shipping stations to Boston, Mass.; also shows carload earnings on wool, in sacks.

Complainants' Exhibit No. 4, Witness Stauder. Statement of lambs fed.

[fol. 2230] List of Exhibits Introduced at Hearing in Docket No. 12146, National Livestock Shippers League et al. v. Atchison, Topeka & Santa Fe Ry. Co. et al., and Docket No. 12268, Board of Railroad Commissioners of South Dakota v. Chicago & N. W. Ry. Co. et al., Before Examiner Disque at Chicago, Ill., June 6 to 9, 1921, Included in Plaintiffs' Exhibit II

Complainants' Exhibit No. 1-A, Witness Wallace. Chart showing steer and hog profits and losses.

Complainants' Exhibit No. 2-A, Witness Wallace. Statement showing average prices of feeders and stockers, native beef cattle and hogs at Chicago (3 sheets).

Interveners' Exhibit No. 3-A, Witness Burke. Annual Report of the Livestock Commission of Montana, 1920.

[fol. 2231] Interveners' Exhibit 4-A, Witness Burke. Statement of carload rates on cattle from Montana shipping points to St. Paul and Chicago with gross car earnings and advance per car since June 25, 1918 (5 sheets).

Interveners' Exhibit 5-A, Witness Burke. Comparison of market prices at Chicago upon Montana livestock together with freight rates from a typical Montana point of origin with statement of percentage of freight rates of market price.

Complainants' Exhibits 6-A to 9-A, Witness Sykes. Statement of hours of man and horse labor to produce an acre of corn on farms, with cost of an hour of man labor and of horse labor; cost of producing corn per acre and per bushel; cost of producing hogs and fat steers.

Complainants' Exhibits 10-A to 16-A, Witness Hutchings. Statements showing number of each kind of livestock received at Chicago, St. Paul, East St. Louis, Omaha, Kansas City, Denver, and Fort Worth, from January 1, 1920, to April 30, 1921.

Complainants' Exhibits 17-A to 23-A, Witness Hutchings. Statements of prices of various kinds of livestock at Chicago, 1913 to 1921.

Complainants' Exhibit 24-A, Witness Hutchings. Statement of farm prices of grain, hay and livestock for each year 1917 to 1921, and average for 1912 to 1916.

Complainants' Exhibit 25-A, Witness Hutchings. Comparison of index figures, prices of livestock, Chicago, 1913 to 1921, with average railway earnings.

Complainants' Exhibit 26-A to 29-A, Witness Sindell. Statement of percentage increase of the various kinds of livestock rates, 1921 over 1917, together with statement of number and value of various kinds of livestock on farms and receipts at various consuming points, and comparisons of increased rates, with graphs showing comparative variations in prices, railroad rates, and volume of receipts (33 sheets).

[fol. 2232] Interveners' Exhibit No. 1, Witness Zwemer. Comparison of rates from South Dakota points to Sioux City and Chicago (6 sheets).

Interveners' Exhibit No. 2, Witness Zwemer. Comparison of South Dakota rates with those from Iowa points.

Interveners' Exhibits Nos. 3 to 7, Witness Zwemer. Statement of rates on livestock from stations in Nebraska and Wyoming to Sioux City and Chicago with proportionate mileage compared with proportionate rate (18 sheets).

Complainants' Exhibit No. 8, Witness Kelley. Map of United States with various through rates indicated from South Dakota, Nebraska, Minnesota and Iowa territory to livestock market.

Complainants' Exhibit No. 9, Witness Kelley. Railroad may of South Dakota with railroad routes indicated.

Complainants' Exhibit No. 10, Witness Kelley. A very voluminous exhibit containing exhibits dealing with rates to Sioux City, to Chicago, to St. Paul, to Sioux Falls, with South Dakota-Iowa-Minnesota scales; data relating to volume of movement, markets, density of livestock, earnings, etc.

Interveners' Exhibit No. 11, Witness Hendricks. Statement of livestock rates between South Dakota and interstate destinations (8 sheets).

Interveners' Exhibit No. 12, Witness Hendricks. Statement of livestock shipments to South St. Paul from C., M. & St. P. main line stations Milbank to Mobridge, January, February and March, 1921.

Interveners' Exhibit No. 13, Witness Hendricks. Graph showing progression in rates.

[fol. 2233] Defendants' Exhibits 30-A and 31-A, Witness Wettling. Colored diagrams showing railway operating revenue and how expended, 1912 to 1920.

Defendants' Exhibits 32-A to 42-A, Witness Wettling. Statement of income and operating income of railroads for various years with separate data as to various districts, with freight and passenger traffic statistics, comparison of revenue expenses and operating income.

Defendants' Exhibit 43-A and 44-A, Witness Wettling. Statement of meat production, consumption and foreign trade, 1907-1920, with statistics as to various kinds of livestock consumed, trend in meat production and consumption in the years 1900-1919.

Defendants' Exhibit 45-A, Witness Mahoney. Statement of meat production, exports and consumption, importation, marketing costs, discussions of tariffs, retail prices, number of livestock on farms andl elsewhere, population of the United States, number of head received a various consuming points, carloads handled by carriers, receipts, valuation, damage claims, caretakers' transportation, revenues derived, average loadings of various commodities, car mileages, earnings, costs, comparisons of rates per ton mile, per gross ton mile, earnings on livestock and various other commodities (100 sheets).

Defendants' Exhibits 46-A and 47-A, Witness Hogsett. Statement of rates on livestock from Texas points to Kansas City, St. Louis, Memphis, and other points in effect on January 1st in each year between 1897-1920, with statement of tariff authorities for quotations from I. C. C. reports (50 sheets).

Defendants' Exhibits 48-A and 49-A, Witness Hogsett. Statement of revenue and earnings on livestock from representative points of origin in Texas to Kansas City and St. Louis.

[fol. 2234] Defendants' Exhibit 50-A, Witness Hogsett. Comparative statement of per car and per car-mile earnings from livestock traffic, Fort Worth to Kansas City, compared with revenue from other carload commodities moving in reverse direction.

Defendants' Exhibits 51-A and 52-A, Witness Hogsett. Statement of class rates from Kansas City to Texas points.

Defendants' Exhibit 53-A, Witness Hogsett. Statement of earnings held reasonable by the Commission in Docket No. 7628.

Defendants' Exhibit 54-A, Witness Hogsett. Statement of area, population, railway mileage for Texas territory July 1, 1926, compared with same commodity for Arkansas, Louisiana and Oklahoma.

Defendants' Exhibit 55-A, Witness Hogsett. Statement of tonnage received at Texas and Pacific stations, 1917.

Defendants' Exhibit 56-A, Witness Hogsett. Statement of loaded cars received and forwarded from T. & P. stations in Texas, 1918-1919.

Defendants' Exhibit 57-A, Witness Hogsett. Statement of less-than-carload traffic from Texas stations.

Defendants' Exhibit 58-A, Witness Hogsett. Statement of basis for rates authorized by railroad administration.

Defendants' Exhibit 59-A, Witness Hogsett. Statement of rates and revenues for transportation of various commodities from Texas points.

Defendants' Exhibit 60-A, Witness Hogsett. Statement of loaded and empty stock car mileage compared with other cars for year ending June 30, 1916.

[fol. 2235] Defendants' Exhibit 61-A, Witness Hogsett. Statement of carload freight handled in 1920 separated as to groupings.

Defendants' Exhibits 62-A and 63-A, Witness Hogsett. Statement of livestock and other traffic movement from entire line of the T. & P. for year 1920, with number of cars and tons for year 1906.

Defendants' Exhibit 64-A, Witness Hogsett. Statement of stock cars ordered for cattle over T. & P. (9 sheets).

Defendants' Exhibit 65-A, Witness Hogsett. Statement of comparison of rates on stock cattle in effect August 25, 1920, compared with present showing revenues.

Defendants' Exhibit 66-A, Witness Hogsett. Statement showing comparison of rates on stock cattle in effect August 25, 1920, with rates in effect in 1921.

Defendants' Exhibit 67-A, Witness Hogsett. Statement of T. & P. freight rates and revenue from Texas points to destinations in other states.

Defendants' Exhibit 68-A, Witness Hogsett. Comparative statement on livestock and other commodities showing average loading, rates and earnings between Texas points (5 sheets).

Defendants' Exhibit 69-A, Witness Hogsett. Statement showing number of cars, average weight, revenue, etc., on shipments of various commodities.

Defendants' Exhibit 70-A, Witness Hogsett. Statement of representative shipments of livestock to Fort Worth via T. & P. Ry. showing transportation averages and returns to shippers over T. & P.

Defendants' Exhibit 71-A, Witness Hogsett. Quotation from Texas newspaper relative to feeding stock.

[fol. 2236] Defendants' Exhibits 72-A to 76-A, Witness Hogsett. Statement of loss and damage claims paid by T. & P. Ry., 1917 to 1920, and amount paid in settlement of such claims.

Defendants' Exhibit 77-A, Witness Hogsett. Statement of value of caretakers' transportation furnished by T. & P.

Defendants' Exhibit 78-A, Witness Hogsett. Engineering report on value of stock pens and facilities of the T. & P. Ry.

Defendants' Exhibit 79-A, Witness Hogsett. Statement showing special facilities, privileges and expenses in handling livestock not chargeable to other traffic (5 sheets).

Defendants' Exhibit 80-A, Witness Hogsett. Specimen account sales K. C. Stockyards, February 3, 1920 (6 sheets).

Defendants' Exhibits 81-A and 82-A, Witness Merrick. Statement of rates and revenues on various commodities between various points.

Defendants' Exhibit 83-A, Witness Merrick. Comparison of rates on livestock from New Mexico points to Kansas City and Chicago compared with other commodities (3 sheets).

Defendants' Exhibit 84-A, Witness Merrick. Comparison of rates on livestock from points in New Mexico to various markets with rates and revenues upon other commodities (3 sheets).

Defendants' Exhibit 85-A, Witness Merrick. Quotations from articles in the "Breeder's Gazette" of January 6, 1921.

[fol. 2237] Defendants' Exhibits 86-A and 87-A, Witness Bostwick. Statement showing number of livestock of various kinds on farms in California, Nevada, Arizona and New Mexico for years 1905 to 1920, inclusive, and number of cars of sheep and tons of fresh meat shipped to Chicago and New York, and for export from California and Nevada.

Defendants' Exhibit 88-A, Witness Bostwick. Statement of cattle rates from Nevada, California, Arizona and New Mexico points to San Francisco showing rate per mile and car-mile earnings, etc. (3 sheets).

Defendants' Exhibit 89-A, Witness Bostwick. Statement of rates on livestock from various points previously shown to San Francisco compared with rates on other commodities to and from the same points (4 sheets).

Defendants' Exhibit 90-A, Witness Andrus. Map of western states showing territories in which the physical characteristics of the country decrease the hauling capacity of locomotives; profiles illustrating revisions of lines and grades in western states and statement of time required for special switching of livestock shipments; comparison of loaded and empty stock car miles; value of return transportation furnished caretakers, number of head of livestock moving to San Francisco and Los Angeles, volume of traffic and revenue from livestock compared with other classes of traffic, 1917 to 1920, and other comparisons of livestock shipments with other commodities on the Southern Pacific. (12 sheets.)

Complainants' Exhibit 91-A, Witness Cowan. A 27-page pamphlet, brief of American National Livestock Association, addressed to Committee on Ways and Means, 66th Congress, favoring import duties on livestock products.

[fol. 2238] Complainants' Exhibit 92-A, Witness Cowan. An article published in the September 1920 issue of "The Producer" entitled "Our Present and Future Livestock Supplies" (6 sheets.)

Defendants' Exhibit 93-A, Witness Wilcox. Containing: Statements of livestock on farms and ranges prior to 1921 in Utah, Idaho, Oregon and Washington; carload traffic by commodity groups from Union Pacific points, 1917-1920; same from Oregon Short Line and Oregon-Washington Railroad and Navigation Co., with valuation of livestock receipts, statement of number of head, number of caretakers traveling, percentage of livestock tonnage carried to total tonnage with earnings per car-mile, per gross ton and per net ton. (47 sheets.)

Defendants' Exhibit 94-A, Witness Trovillion. Statement showing: Rates on livestock from Oklahoma points to Kansas City in effect January 1st each year 1897 to 1921; same to East St. Louis and Chicago; average loading livestock compared with other commodities on M-K-T lines, 1912 to 1920. Statement of total number of cars, average ton per car, revenue, freight handled by M-K-T during the year 1920; earnings per car-mile on livestock from Okla-

homa points to East St. Louis and Kansas City; East St. Louis and in reverse direction. Statement showing rates, distances and rates per gross ton, per net ton mile, per gross ton mile, etc., on various commodities, including livestock from Oklahoma points to various destinations; statement comparing freight revenue with claim payments, showing ratio of claim payments on livestock to claim payments on other commodities. Estimated cost of facilities used for livestock shipments on M-K-T. Statements showing number and cars, revenue, tonnage, car miles, ton miles, etc., on livestock shipments on M-K-T. (50 pages.)

Defendants' Exhibit 95-A, Witness Cleveland. Statement of number of cars of livestock, 1911 to date, and comparison of number of livestock cars with other commodities; statement of number of cars handled by C. & N. W., compared with other traffic; comparison of traffic densities, C. & N. W., for a number of years; comparison of average rates on livestock to other carload freight; per car charge 1920 over 1911; statement showing per ton charge, ton mile haul, and other statistics on livestock shipments and other [fol. 2239] commodities. Statement of average loading of livestock compared with all carload traffic. Comparison of gross ton-mile earnings on livestock, C. & N. W., with total earnings on other commodities. Statement of number of car miles and loaded service on livestock compared with loaded car-mile service on all commodities. Statement of loss and damage claims 1917-1920, paid on livestock compared with claims on other carload traffic. Statement of receipts on shipments of livestock by C. & N. W. Ry. Co., at Omaha, Sioux City, and Milwaukee, 1919 and 1920. Statement of estimated expenses peculiar to livestock transportation. Statement of approximate percentage of empty to loaded mileage. Statement of percentage relationship of revenue weight to total gross weight of cars containing livestock compared with its relationship to other commodities.

Defendants' Exhibit 96-A, Witness Cleveland. Comparison of livestock rates from stations on the C. & N. W. in Wisconsin, Iowa, Minnesota, to Chicago, with C. F. A. (603) livestock scale. Comparison of livestock rates from stations on the C. & N. W. to Chicago with its southwestern livestock scale. Comparison of livestock rates from South Dakota to Chicago with southwestern livestock scale. Comparison of livestock rates from South Dakota to St.

Paul with rates under the South Dakota scale (east of Missouri River). Comparison of rates, per car charges, and car-mile earnings on livestock from Wisconsin, Iowa, Minnesota, Nebraska and South Dakota to Chicago. Comparison of livestock rates with grain rates. Comparison of livestock rates from South Dakota stations with grain rates. Comparison of charges and earnings per car on livestock with rates on potatoes. Comparison of livestock rates with earnings on agricultural implements in reverse direction. Comparison of livestock rates with the Chicago commodity rates on butter and eggs, same on packing house products. Comparison of relationship of livestock rates to first-class rates from stations in South Dakota to Chicago, and with rates from other points. Comparison of livestock rates with rates from Nebraska points on the C., B. & Q. to St. Joseph. Comparison of rates on livestock from South Dakota to Chicago with rates on same commodities from stations in Oklahoma and Kansas to Chicago. Compari- [fol. 2240] son of livestock rates from South Dakota points to St. Paul with rates from Nebraska points on the Burlington Railroad to St. Joseph, Mo. Comparison of Iowa single-line mileage rates on livestock with the Illinois scale and C. F. A. scale.

Defendants' Exhibit 97-A, Witness Cleveland. Comparison of livestock rates in Minnesota with the C. F. A. scale.

Defendants' Exhibit 98-A, Witness Cleveland. Comparison of Nebraska livestock rates with the C. F. A. scale.

Defendants' Exhibit 99-A, Witness Cleveland. Statement of livestock density for C. & N. W. Ry.; statement showing tonnage originating C. & N. W.; statement of total number of tons handled compared with South Dakota. Statement showing tonnage originating in various states together with traffic density in various states. Statement of freight traffic from South Dakota compared with adjacent states. Statement of 1919 operations illustrating South Dakota freight tonnage. Statement showing density of population of South Dakota compared with other states.

Defendants' Exhibit 100-A, Witness Cleveland. Statement relative to retail prices of meats.

Defendants' Exhibit 101-A, Witness Cleveland. Statement of retail prices of specified meats and percent of increase or decrease, January 15th of certain years since 1914 compared with January 15, 1913.

Defendants' Exhibit 102-A, Witness Casler. Department of Agriculture estimate of number of head and valuation of livestock, 1903 to 1921.

Defendants' Exhibit 103-A, Witness Casler. Statement of number of head of livestock received at Wichita, Oklahoma City and Fort Worth, 1903 to 1920.

[fol. 2241] Defendants' Exhibit 104-A, Witness Casler. Santa Fe statistics, 1917 to 1920, showing receipts from livestock agricultural products and other commodities.

Defendants' Exhibit 105-A, Witness Casler. Statement of Santa Fe loss and damage claim payments on livestock compared with other carload freight.

Defendants' Exhibit 106-A, Witness Casler. Statement of amount paid by Santa Fe in settlement of claims for personal injury to caretakers of livestock and of claims for loss and damage to livestock shipments.

Defendants' Exhibit 107-A, Witness Casler. Statement of value of transportation issued by Santa Fe to caretakers of livestock shipments.

Defendants' Exhibit 108-A, Witness Casler. Statement of number of carloads of livestock handled 1905-1920.

Defendants' Exhibit 109-A, Witness Casler. Statement of loaded and empty car miles of the Santa Fe for year ending June 30, 1916.

Defendants' Exhibit 110-A, Witness Casler. Statement of average net and gross weight per car handled for various commodities, including proportion of net weight of car represented by ratio of empty to loaded mileage.

Defendants' Exhibit 111-A, Witness Casler. Statement of average loading per car of livestock on Santa Fe and of carload revenue freight.

Defendants' Exhibit 112-A, Witness Crosby. Statement of statistical information re movement of livestock, 1917-1920, Rock Island Lines comparing livestock and other products; statement of loss and damage claims by Rock Island in livestock transportation compared with other freight; statement of the value of transportation issued by Rock Island to caretakers of livestock; statement of number [fol. 2242] of cars of livestock handled by the Rock Island during each calendar year from 1906 to 1920, inclusive; statement showing number of cars of livestock compared with other commodities; statement of ratio movement of empty to loaded equipment on Rock Island for October

1915; statement showing average loading per car on Rock Island during calendar years 1917-1920; map showing Rock Island Lines in red; statement of rates on livestock from representative points to primary markets compared with rates on other commodities showing earnings per car, per car-mile, per ton and per net ton; statement showing earnings from transportation of livestock on Rock Island Lines during 1920 compared with other commodities; statement comparing specific rates on livestock via Rock Island to various market points with distance scale of rates applicable in C. F. A. territory; statement showing traffic density, C., M., St. P. Ry. in various states during 1920; statement of local traffic handled showing earnings per car and per car mile; statement showing number of tons of equipment held per ton of livestock with similar comparison as to other commodities. (20 sheets.)

Defendants' Exhibit 113-A, Witness Soergel. Statement showing earnings of C., M. & St. P. on various commodities; statement of the average tare weight of freight cars; statement of loaded and empty car miles made by each class of equipment; statement of rates on livestock, C., M. & St. P. to Chicago showing earnings, compared with other commodities and to other representative points; statement showing grand average of rates, mileage and other data covering livestock from South Dakota to Chicago and other commodities from and to representative points; statement of rates on livestock from South Dakota to St. Paul compared with other commodities to and from other representative points; statement of rates on livestock from South Dakota to Chicago and other market points compared with rates fixed by the Commission in the Southwestern States Report, 22 I. C. C. 160, and those fixed in 36 I. C. C. 675, 53 I. C. C. 114; statement of Great Northern Railway revenues and expenses for the year 1920, same as to state of North Dakota; statement of revenue of tons handled per mile during 1918, 1919 and 1920; statement showing rates on livestock to Chicago and other markets from points on the Great Northern in North Dakota and South Dakota. (65 sheets.)

[fol. 2243] Defendants' Exhibit 114-A, Witness Soergel. Clipping from newspaper relative to livestock pool.

Defendants' Exhibit 115-A, Witness Burgess. Estimate of loss that would accrue to railroads if Ex Parte 74 advance was removed.

Defendants' Exhibit 116-A, Witness Biedelman. Statement of livestock prices at Portland, Oreg., 1912 to 1920 inclusive; same showing number of head of livestock received; statement showing number of cars handled 1905 to 1920 inclusive; statement showing distance, rates and revenues on livestock from shipping points in Montana and North Dakota to various markets; same as to other commodities.

Defendants' Exhibit 117-A, Witness Biedelman. Map of Great Northern Railway.

Defendants' Exhibit 118-A, Witness Morrison. Statement of volume of traffic and percentage of cars to total volume of carload freight and percentages of revenue of various commodities on the Great Northern for the year 1917 to 1920.

Defendants' Exhibit 119-A, Witness Morrison. Statement of net tons per mile with gross tons per car-mile, net revenues and gross revenues upon various commodities for 1920.

Defendants' Exhibit 120-A, Witness Morrison. Statement relative to caretakers carried with livestock shipments.

Defendants' Exhibit 121-A, Witness Morrison. Value of transportation furnished caretakers.

Defendants' Exhibit 122-A, Witness Morrison. Comparison of present rates on livestock from points in State of Washington to St. Paul and Chicago with rates on other commodities.

[fol. 2244] Defendants' Exhibit 123-A, Witness Morrison. Same from Montana and Idaho (9 sheets).

Defendants' Exhibit 124-A, Witness Vivian. Statistics as to revenue, C., M. & St. P. for 1917.

Defendants' Exhibit 125-A, Witness Vivian. Statistics as to revenue, C., M. & St. P. for 1918.

Defendants' Exhibit 126-A, Witness Vivian. Statistics as to revenue, C., M. & St. P. for 1919.

Defendants' Exhibit 127-A, Witness Vivian. Statistics as to revenue, C., M. & St. P. for 1920.

Defendants' Exhibit 128-A, Witness Vivian. Statement of livestock handled by C., M. & St. P., separated as to kind of stock and compared with the movement of other commodity groups.

Defendants' Exhibit 129-A, Witness Vivian. Comparative statement showing relation of damage payments to freight revenue of all livestock transported for 11 years.

Defendants' Exhibit 130-A, Witness Vivian. Statement of livestock handled by C., M. & St. P., for last 5 years separated as to kinds of stock.

Interveners' Exhibit 131-A, Witness Ross. Statements showing number of cars of livestock shipped via various railroads from South Dakota and Nebraska to various markets during 1920, with sketch map showing railroad routes (11 sheets).

Interveners' Exhibit 132-A Witness Ross. Population of South Dakota and Nebraska by counties; table showing number and farm value of livestock in South Dakota and Nebraska for 1919; statistics of railway earnings and density of traffic in Nebraska compared with South Dakota for 1919.

[fol. 2245] Interveners' Exhibit 133-A, Witness Ross, Statement comparing rates on distance on various kinds of livestock from points in South Dakota and Nebraska to various markets (10 sheets).

Interveners' Exhibit 134-A, Witness Kelley. Copy of Nebraska law relative to transportatioff of caretakers.

Interveners' Exhibit 135-A, Witness Kelley. Statement entitled "Analysis of Methods Employed By Carriers in Arriving at So-called 'Operating Results' in South Dakota". Extracts from Master's Report of U. S. Circuit Court, District of South Dakota, Southern Division, in Case No. 519. Sheet entitled "Statement showing fallacy of basis used by carriers in apportionment of earnings on interstate traffic in South Dakota". Statement entitled "Further examples of fallacy of mileage prorate basis". Statements of l. c. l. shipments received and forwarded from stations on the C. & N. W. Ry. Co. in October 1920. Statements concerning terminal costs of handling freight on C., M. & St. P. Ry. for year ending June 30, 1915.

Interveners' Exhibit 136-A, Witness Kelley. Exhibits showing relation costs of operating and *and* maintenance between lines operating within and without the State of South Dakota for the fiscal year ending June 30, 1916.

Interveners' Exhibit 137-A, Witness Kelley. Printed map of C. & N. W. Lines.

Complainants' Exhibit 138-A, Witness Hutchings. Statement of Witness Kelley submitted by consent subsequent

to the completion of his testimony before the Examiner, including a revised copy of Exhibit 23-A and statement of comparative increases in freight rates upon various commodities.

Complainants' Exhibits 139-A, Witness Hutchings. Statement entitled "Cane v. Beet Molasses for Fattening Two-Year Old Steers II".

[fol. 2246] Complainants' Exhibit 140-A, Witness Hutchings. Statement of average farm price of livestock January 1st of each year 1910 to 1921.

Complainants' Exhibit 141-A, Witness Hutchings. Comparison of earnings per mile on cattle D. D., C. L., with all traffic for western districts and for the United States.

Complainants' Exhibit 142-A, Witness Hutchings. Comparison of earnings per ton mile on hogs S. D., C. L., with all traffic for western districts and for the United States.

Complainants' Exhibit 143-A, Witness Hutchings. Comparison of increase in earnings per ton mile on cattle between specific points with increase in earnings on all traffic in the western districts, 1920 over 1913.

[fol. 2247] List of Exhibits Introduced at Hearing in Docket No. 13273, In the Matter of Interstate and Intrastate Rates for the Transportation of Ordinary Live Stock, in Carloads, from Points in Nebraska to Omaha and South Omaha, Nebraska, in Their Relation to Rates on the Same Commodity, in Carloads, from Points in Nebraska to Kansas City, and St. Joseph, Mo., and Sioux City, Iowa, Before Examiner Disque at Omaha, Nebr., May 16 to 19, 1922, Included in Plaintiffs' Exhibit JJ

Respondents' Exhibit No. 1, Witness Mahoney. Reproduction of the Aldrich Bill passed by the Nebraska Legislature. Statement showing rates on livestock from points in Nebraska on the C., B. & Q. R. R. to Kansas City, St. Joseph, Mo., and Omaha, Nebr., prior to and with the Aldrich reduction. Map of Nebraska showing points referred to on previous page. Statements showing number of carloads of livestock shipped via C., B. & Q. from Nebraska to Missouri River markets during 1916, 1920 and 1921. Statement of rates on livestock to Omaha, Nebr., in effect prior to October 15, 1919, from Nebraska, as compared with rates prescribed by the I. C. C. in 36 I. C. C. 675, 22 I. C. C. 160 and 41 I. C. C. 83 and 48 I. C. C. 283. Statement showing

resultant rates on livestock if order in 53 I. C. C. 114 had been complied with. Statements covering rates on livestock (except horses) from stations in Nebraska to Missouri River markets. Statement showing average rates on livestock (except horses and mules, from Nebraska to St. Joseph and Kansas City. Statement showing density of freight traffic for the C., B. & Q. and all lines in State of Nebraska. Map of Nebraska showing location of Omaha and other Missouri River markets. Statement showing present rates on livestock to Omaha, Nebr., from stations in Nebraska. Statements of freight handled by C., B. & Q. R. R. during 1917, 1918, 1919, 1920 and 1921, specifying commodities. Statement showing loss and damage claim payments during 1920 and 1921. Statement of amounts paid by C., B. & Q. R. R. during 1917-1921. Statement of value of transportation issued attendants accompanying shipments of livestock during 1921. Statement showing average loading of carload freight on C., B. & Q. for 1910, 1915 and 1920. (27 sheets.)

Respondents' Exhibit No. 2, Witness Cleveland. Statement showing comparison of number of cars, car miles, revenue and average car haul on Nebraska livestock with all other carload freight. Statements showing freight traffic and livestock densities of the C. & N. W. for 1921. Statement comparing earnings per car mile on livestock in Nebraska with other carload freight. Statement comparing [fol. 2248] earnings on livestock from Nebraska to Omaha with rates on same from South Dakota to Sioux City. Statement showing rates on livestock from Nebraska points to Omaha, Nebr., prior to Aldrich Bill and present rates. Statement of average rates on livestock from Nebraska to Omaha and Sioux City. Statement comparing rates on livestock from Nebraska to Omaha, Nebr., with various other rates on the same commodity from other points. Statement comparing the percentage relationship of livestock rates to first class rates from Nebraska points to South Omaha, Nebr., with other percentage relationships. Statement comparing rates and ton mile earnings on livestock from Henry, Nebr., to South Omaha, Nebr., with rates and ton mile earnings from Harrison, Nebr. Statement comparing rates on livestock from Nebraska points to South Omaha, Neb., with rates from South Dakota and Minnesota. Comparison of rates, charges per car and per

car-mile on livestock from South Dakota to Omaha, Nebr., and Sioux City with rates, etc., on grain and potatoes. (32 sheets.)

Respondents' Exhibit No. 3, Witness Frankenberger. Sketch showing the lines of the Union Pacific, St. J. & G. I., C., B. & Q., and C. & N. W., in Nebraska. Statements showing number of cars and tonnage of livestock from points in Nebraska to Omaha, Kansas City, and St. Joseph, during 1921. Statement showing absorptions of livestock. Statement of rules covering transportation of attendants. Statements of rates on livestock from points in Nebraska to Omaha, St. Joseph, Kansas City. Statement of rates on livestock showing rates in effect June 30, 1907, as reduced July 5, 1907, at present time. Statement showing comparison of rates on livestock from points in Nebraska to Omaha, Nebr., and Kansas City, and amount of difference in rates. Statement of rates, revenue per car, and revenue per car mile on cattle, hogs and sheep, from points in Nebraska to Omaha, St. Joseph and Kansas City. Statement of rates on livestock (except horses) from points in Nebraska to South Omaha, St. Joseph and Kansas City, as compared with C. F. A. and Oklahoma scales. Statement covering rates on livestock from points in Nebraska to Missouri River markets, separated into 25-mile groups. Statement showing U. P. R. R. revenue accruing to Nebraska from shipments of cattle, hogs and sheep for 1921.

[fol. 2249] Respondents' Exhibit No. 4, Witness Mintz. Statement comparing rates on livestock from Nebraska stations to Omaha and Sioux City with other rates. Comparison of percentage relationship of livestock rates to first class rates. History of cattle and hog rates from C., St. P., M. & O.

Nebraska points. Statements showing number of cars and market destinations of livestock from Nebraska points to Omaha and Sioux City. Statements showing statistics covering livestock shipments, also operating statistics, traffic density, etc. Sketch map showing C., St. P., M. & O. Ry. (16 sheets.)

Exhibit No. 5, Witness Stough. Memorandum from organizations of Grand Island, Nebr.

Mo. Pacific's Exhibit No. 6, Witness Stough. Statements showing livestock rates between various Nebraska points, also number of cars (6 sheets).

Respondents' Exhibit No. 7, Witness Rigg. Statements and map showing movement and rates on livestock from Nebraska points to Omaha, St. Joseph and Kansas City (11 sheets).

Respondents' Exhibit No. 8, Witness Frankenberger. Statement relative to mileage distances from Nebraska points to Kansas.

Exhibit No. 9, Witness Zwemer. Blue print map illustrating railroad routes in Nebraska.

Exhibit No. 10, Witness Zwemer. Printed map showing lines of railroad in Nebraska and statements of livestock rates to market points with comparisons thereof; comparison of earnings upon livestock on various railroads to market points. (29 sheets.)

Exhibit No. 11, Witness Zwemer. Blue print graphs showing comparison of mileage and cattle rates from Nebraska points to Omaha and Sioux City (5 sheets).

Exhibit No. 12, Witness Zwemer. Statement of population per railroad mile on Nebraska railroad lines.

Exhibit No. 13, Witness Zwemer. Letter stating extracts from time tables showing train movements in Nebraska.

[fol. 2250] Exhibit No. 14, Witness Zwemer. Statement showing jobbing rates and mileage from Sioux City and Omaha to stations in Nebraska.

Exhibit No. 15, Witness Zwemer. Scale of commodity distance rates on building materials in Nebraska.

Exhibit No. 16, Witness Little. Graphs and tables showing number of head of various kinds of livestock on farms in various states and number of head per car in Nebraska, 1920. Same with regard to corn and hay. Graphs and tables showing number of head shipped, value of number slaughtered. Statements showing destinations from Iowa, Illinois, Kansas, Minnesota, Missouri, Nebraska, South Dakota, New Mexico, Oklahoma and Texas in 1919. Statements of receipts of livestock at Omaha. Statements of traffic densities for lines in Iowa, Missouri, Minnesota, Wisconsin and Kansas, 1920. Statements of specific commodity rates on livestock from stations on various railroads in Nebraska to Omaha compared with similar intrastate distances in Kansas, Iowa, Missouri, Wisconsin and Minnesota. Statements showing comparison of rates on cattle, hogs and sheep from Nebraska stations on various railroads with similar rates from Kansas to Kansas City, St.

Joseph, Omaha, Chicago and other destinations. (129 sheets.)

Exhibit No. 17, Witness Childe. Map showing rates on livestock from Nebraska points and northern Kansas to various destinations.

Exhibits Nos. 18, 19 and 20, Witness Childe. Statements comparing rates and distances on livestock from various stations in Nebraska to various destinations (7 sheets).

Exhibit No. 21, Witness Childe. Statement showing rates from certain points in Kansas to specified destinations (2 sheets).

Exhibit No. 22, Witness Childe. Statement of rates and differences on livestock from Burlington stations to Omaha versus Kansas (2 sheets).

Exhibits Nos. 23, 24 and 25, Witness Childe. Statements of various livestock rates and comparisons from Nebraska points to various destinations (9 sheets).

[fol. 2251] Exhibits Nos. 26 and 27, Witness Stryker. Excerpts from testimony in I. C. C. Docket No. 9758 (5 sheets).

Exhibit No. 28, Witness Stryker. Comparison of livestock rates from certain points on the Burlington to Omaha compared with rates for equal distances to Kansas City and St. Joseph.

Exhibits Nos. 29, 30 and 31, Witness Stryker. Tabulations of distances, rates and earnings per car mile upon livestock from certain Nebraska stations to consuming points (7 sheets).

Exhibit No. 32, Witness Stryker. Statement of livestock densities for C. & N. W. Ry.

Exhibit No. 33, Witness Stryker. Tabulation of number of cars of livestock shipped to market points on C., B. & Q. R. R., 1917 and 1920.

Exhibit No. 34, Witness Stryker. Tabulations and other data relative to net freight costs of livestock shipments (5 sheets).

Exhibit No. 35, Witness Stough. Affidavits of various Nebraska citizens relative to freight rates (17 sheets).

Exhibit No. 36, Witness Tedrow. Map of Nebraska and Kansas showing various railroad routes.

Exhibit No. 37, Witness Tedrow. Tabulations showing rates and other data upon various kinds of livestock from various points in Kansas and Nebraska to Missouri River points (38 pages).

Exhibit No. 38, Witness Rigg. List of markets with names of carriers reaching the same (3 sheets).

Exhibit No. 39, Witness Cleveland. Statement of average rates and earnings on the C. & N. W., 1921.

Exhibit No. 40, Witness Cleveland. Copy of Act of Nebraska Legislature, 1921.

Exhibit No. 41, Witness Tedrow. Director General's scale and Dimmitt scale and extension thereof, of livestock rates (5 sheets).

[fol. 2252] Exhibit No. 42, Witness Tedrow. Statement of rates on livestock and distances to Kansas City-St. Joseph, with average rate figured.

Exhibit No. 43, Witness Tedrow. Statement of average Kansas rates and what rates on hogs and sheep would be based 120 and 125 per cent of cattle rates.

Exhibits Nos. 44 and 45, Witness Tedrow. Statement of livestock rates from C., B. & Q. points and U. P. points in Nebraska to Kansas City, St. Joseph and Omaha, with statement of rates under other scales (12 sheets).

Exhibit No. 46, Witness Tedrow. Statement of existing rates between Nebraska points and consuming points for livestock showing spreads, etc. (6 sheets).

Exhibit No. 47, Witness Tedrow. Comparison of rates from southern Nebraska with those from northern Kansas.

Exhibit No. 48, Witness Tedrow. Statement of livestock rates from Wyoming, Montana, South Dakota and Denver and Colorado common points to Kansas City, St. Joseph and Omaha.

Exhibit No. 49, Witness Tedrow. Statement showing differences in rates over Omaha (2 sheets).

Exhibits Nos. 50 and 51, Witness Tedrow. Statements showing effect of mileage scale upon livestock rates (4 sheets).

Exhibit No. 52, Witness Tedrow. Statement comparing receipts of livestock at Missouri and Mississippi River markets, 1921, with Wichita, Oklahoma City and Ft. Worth.

[fol. 2253] List of Exhibits Introduced at Hearing in Docket 12358, Texas Live Stock Shippers Protective League et al. v. Director General et al., and associated cases, to wit: Wichita Board of Commerce et al. v. Director General et al., Docket No. 11018; Chamber of Commerce of Kansas City v. Alexandria & Western Ry. Co. et al., Docket No. 13001; Ross Bros. Horse and Mule Co. et al. v. Union

Pacific R. R. Co. et al., Docket No. 13619; Burnett-Yount Horse and Mule Co. et al. v. A. & S. Ry. Co. et al., Docket No. 13627; Rates on Horses and Mules to, From and Between Southwestern Points, I. & S. No. 2389; Horses and Mules from Kansas City and Wichita to New Orleans, Memphis and other points, I. & S. 1483; the Nebraska Live Stock Case, Docket No. 13273; Board of Railroad Commissioners of South Dakota v. Chicago & N. W. Ry. Co., Docket No. 12268, and Fourth Section Applications 461, 462, 621, 673 and 678, before Examiner Simons at Kansas City, Mo., October 1, 2, 3, 4 and 5, 1928. Included in Plaintiffs' Exhibit KK.

[fol. 2254] Complainants' Exhibit No. C-168, Witness Pelton. Freight and car performance and unit cost of freight operation for certain operating divisions, A., T. & S. F. Ry. Co., for the years 1915, 1924, 1925 and 1927. Statement showing main line and branch line mileage, A., T. & S. F. Ry. Co. by operating divisions, December, 1927. Statement showing freight train and car performance and unit cost of freight operation of the International-Great Northern R. R. Co., Ft. Worth & Denver City Ry., and Galveston, Harrisburg & San Antonio Ry. Statement showing mileage and cost statistics on the International-Great Northern R. R. and Galveston, Harrisburg & San Antonio Ry., for years 1926-1927. Statement showing miscellaneous operating statistics for class I roads operating in western district; operating results of principal southwestern lines for 1925; and improved operating results of principal southwestern lines and lines operating in western district. Statement showing rate per cent income from operation, railroads in Texas, and showing improved operating conditions in Texas. Statement showing operating statistics of northwestern and southwestern lines, also of progress of railroad mileage, tonnage, earnings, etc., in Texas since 1920. Statement showing comparison of distance rates on horses and mules; also illustrating the advantage of Kansas City and Wichita over Ft. Worth in shipping horses and mules through those concentrating points. Statement showing analysis of rates on horses and mules between points in New Mexico and Texas differential territory. Statement showing population of counties lying in Texas differential territory, also showing population per mile of railroad. (13 sheets.)

Complainants' Exhibit No. C-169, Witness Pelton. Statement showing number miles new lines constructed in Texas since 1918. Statement showing number farms, by counties, in Texas differential territory in 1925 versus 1910-1920. Statements showing agricultural production in Texas differential territory. Statement showing petroleum production in Texas differential territory for years 1920-1927. Statement showing automobile registration for Texas, 1923 and 1927. Statement showing increased traffic density on principal Texas lines during 1921-1925. Statement showing operating results of principal Class I carriers operating in Texas differential territory compared with other principal lines in common point territory for 1925. Statement showing improved operating result Texas lines during the years 1921 to 1925. Statement showing rail mileage in Texas differential territory as described in S. W. L. I. C. C. 1953. Rates on horses and mules Un. Pac. Tariff I. C. C. 3421 compared with 12358 scale.

[fol. 2255] Comparisons of rates on horses and mules between Kansas City, St. Louis, Omaha and various Kansas and Oklahoma points compared with the 12358 scale. Statement showing freight operating statistics for the Rio Grande Division of the Texas & Pacific in comparison with representative divisions of the I. G. N. and G. F. & S. F., in Texas common point territory. (Upon objection the figures of said statement relative to the Texas & Pacific were excluded by the examiner. See Tr. 969.) (22 sheets.)

Complainants' Exhibit No. C-170, Witness Pelton. Rates on horses and mules between points in Kansas, Missouri, New Mexico, Oklahoma and Nebraska and Colorado; also traffic density by states for year 1927 (7 sheets).

Interveners' Exhibit No. C-171, Witness Ross. Statement showing number of head and value of horses and mules on farms for various states for the years 1926, 1927 and 1928. Map showing how the State of Nebraska has been divided into four districts. Statement showing number of head of horses and mules on farms and value by counties and districts, 1927. Statement showing C. L. shipments and number of horses and mules received at Omaha Horse and Mules Commission via all railroads for the year 1927. Statement showing number of horses and mules received at South Omaha from various states over the Burlington, Northwestern and Union Pacific for 1927. Ex-

cerpts from decisions of the I. C. C. Statement showing actual movements of horses and mules to South Omaha via Burlington, Northwestern and Union Pacific, and statistical data build up on that movement for 1927.

Statement showing traffic statistics on horses and mules compared with other commodities. Statement showing distance rates on cattle prescribed by the I. C. C. for application in various sections. Statement showing cost of handling a net ton a mile is cheaper west of the Missouri River than east thereof in the various states. (15 sheets.)

Interveners' Exhibit No. C-172, Witness Ross. Traffic density by states and other geographical divisions for 1927 (13 sheets).

Interveners' Exhibit No. C-173, Witness Carr. Map illustrating location of railroads, states, cities, markets, etc. South Dakota map showing similar data for South Dakota. Sketch showing production of horses, etc., in various census divisions. Sketch showing production of horses and mules by counties in South Dakota. State-[fol. 2256] ment showing values for horses, mules, etc., in United States and in South Dakota versus other states. Volume of movement from various states and trend of movement from South Dakota, also loss and damage claims. Statement regarding loss and damage claims on livestock, C., M. & St. P. Ry. Relationship of rates, horses versus cattle, etc., under early adjustment. Analysis of earnings, horses and mules on various western roads and comparative earnings on horses versus other livestock. Comparative rates and earnings on horses versus cattle, etc., under 12268 scale. Analysis of earnings based on actual shipments, South Dakota to various states. Earnings on horses versus cattle under present tariffs. Earnings on horses for representative western roads compared with earnings under 12268 scale. Comparative earnings on horses versus other commodities per ton and per ton mile, 1924. Graphic analysis of earnings on horses per ton and per mile compared with other traffic on the C., M. & St. P. and C., St. P., M. & O. Impropriety of comparisons with heavy loading commodities. Net and gross ton mile revenues on fruits from western origin points. Comparison between 12268 and 12358 horse scales. Comparisons with the horse rates under 12268 versus Minn., Ill., Nebra., and certain interstate adjustments. Analysis of rates on

horses, South Dakota to Sioux City versus other western rates. Graphic analysis of rates to Sioux City from Iowa versus South Dakota points. Sketch of rates to So. St. Paul from South Dakota, North Dakota, etc. Graphic analysis, horse rates to So. St. Paul from Minnesota and South Dakot Sketch illustrating similarity in conditions, eastern South Dakota versus So. Minn. Sketch illustrating adjustment prescribed in the Holmes & Hallowell Case. Relative purchasing power of horses and other farm products. Reproduction of typical complaint relating to present rates. Statement showing increase in farm foreclosures in S. Dak. Statement, 9th Federal Reserve Bank, showing decreased value of farm crops. Statement showing great increase in mortgage indebtedness of South Dakota farms. Statement showing empty versus loaded car mileage on various classes of freight equipment. Statement showing differences prescribed in rates, northwest versus southwest in other cases. Sketch showing traffic density on the C., M. & St. P. Ry. Data illustrating traffic density on the C., B. & Q. Statements illustrating traffic density on the Nor. Pac., C., R. I. & P., Un. Pac. and Gr. Nor. Statement showing lesser value of railroad properties in South Dakota. Exhibit showing other features of the So. Dak. situation, C. & N. W. Operating expenses, costs, etc. on operating division C. & N. W. Statements showing other features of South Dakota situation, C. M. & S. P., Gr. Nor., and M. & St. L. R. R. (52 sheets.)

[fol. 2257] Interveners' Exhibit C-174—Witness Carr. Sketch illustrating South Dakota's proposed division of western trunk line territory for livestock rates and showing also districting used in other cases. Statement showing scales of rates proposed on fat cattle (also sheep and hogs) for application locally in Districts No. 1 and No. 2, also interterritorially between the districts. Statement comparing the South Dakota proposed District 1 maximum scale of horse and mule rates, with the present maximum horse and mules rates of the more important scales applying interstate and intrastate in western trunk line territory. (3 sheets.)

Complainants' Exhibit No. C-175, Witness Tedrow. Statement showing receipts of horses and mules at public stock yards, from 1915, also at principal markets from 1900. Charts illustrating the same. Number and value or

horses and mules on farms. Statements showing number and value on farms and farm price by age groups, from 1900 to 1928. Chart illustrating the same. Average farm price, 15th of Month, various years. Chart showing the same. Statement showing exports and prices, 1900 to 1925; also showing receipts and prices at Kansas City, 1912-1927. Statement of yearly receipts of horses and mules at Kansas City from various states, 1912 to 1927. Statement showing various mileage scales on horses and mules. Statement of comparison of various mileage scales. Chart illustrating the same. Statement of progression in various scales. Statement of present and proposed rates from Missouri, Kansas and Colorado points to Kansas City. Statement of effect of mileage scales on rates from Kansas and Colorado to various markets. Statement of combination of rates over various markets from and to various points of origin and destination. Statement of comparison of various scales and percentage relationship to cattle rates. Comparison of operating statistics, W. T. L. and Southwest territories. Statement of routes and tariff authorities. (29 sheets.)

Complainants' Exhibit No. C-176, Witness Corp. Statement showing present relationship of horse and mule rates from Wichita and Kansas City to Mississippi Valley Territory depicting the serious disadvantage at which Wichita is placed in meeting competition of Kansas City. Statement showing relationship of present proportional rates on horses, mules, burrow and asses from Wichita and Kansas City to Memphis as compared with flat rates. Statements [fol. 2258] showing the relationship of rates on horses and mules prescribed by the I. C. C. in Docket 12358 from various origins to various destinations. Statements showing the relationship of rates on classes and commodities prescribed by the I. C. C. in Docket 13535 from Wichita vs. Kansas City, Oklahoma City and Ft. Work to various points. Statement showing relationship of short line distances Kansas City versus Wichita on the one hand and the lower Mississippi River west bank points. Statement showing routes. Statements showing scale of rates applicable to fat cattle, calves, hogs, sheep or goats, various scales. Statements showing the southwestern horse scale Docket 12358 and Column 30 (Class C) Docket 13535 rates. Statement showing proposed scale applicable to horses, mules, burros and asses based on 115% of the revised fat cattle scale. Statement showing the single line progres-

sion per 100 miles in rates on horses, mules, burros and asses of the proposed scale and the various other scales. Graph showing the eight scales. (21 sheets.)

Defendants' Exhibit No. C-177, Witness Inkley. Statement showing proposed southwestern scale on horses and mules, carloads. Defendants' Exhibit No. C-178, Witness Inkley. Statement showing carriers' proposed scale on horses and mules compared with scale prescribed in Docket 12358, also carriers' proposal in 12358 case (2 sheets).

Defendants' Exhibit No. C-179, Witness Inkley. Statement showing number of cars of horses and mules handled via St. L.-S. F. Ry. for years 1920 to 1926.

Defendants' Exhibit No. C-180, Witness Inkley. Statement showing loaded and empty car miles by classes of equipment 35 roads, western district, for October, 1926 (2 sheets).

Defendants' Exhibit No. C-181, Witness Inkley. Statement showing mileage of freight equipment for St. Louis-San Francisco Ry. System for 1926 and 1927.

Defendants' Exhibit No. C-182, Witness Inkley. Statement showing comparison of per car earnings on horses and mules on basis of present and proposed southwestern scales with commodities classified Class "A" or lower (10 sheets).

[fol. 2259] Defendants' Exhibit No. C-183, Witness Inkley. Statement showing comparison of per car earnings on horses and mules on basis of present and proposed southwestern scales with per car earnings on commodities classified class "A" or lower, listed on p. 464 of 123 I. C. C. 203, 464, on basis of rates prescribed therein, also percent per car earnings on other commodities are of per car earnings on horses and mules (8 sheets).

Defendants' Exhibit No. C-184, Witness Inkley. Statement showing comparison of per car earnings on horses and mules on basis of present and proposed rates with per car earnings on other commodities rated class A or lower, also percent per car earnings (5 sheets).

Defendants' Exhibit No. C-185, Witness Inkley. Statement showing present rates on horses and mules from Oklahoma to St. Louis, Memphis and New Orleans compared with 13535 class A and B rates (3 sheets).

Defendants' Exhibit No. C-186, Witness Clark. Statement of present and prior rates on horses and mules from Arkansas and Louisiana points to St. Louis.

Defendants' Exhibit No. C-187, Witness Clark. Statement of rates and revenues on horses and mules from Arkansas and Louisiana to St. Louis.

Defendants' Exhibit No. C-188, Witness Clark. Statement of revenue on horses and mules compared with revenue on other commodities (2 sheets).

Defendants' Exhibit No. C-189, Witness Clark. Statement of present and prior rates on horses and mules from Arkansas and Louisiana to Memphis, Tenn.

Defendants' Exhibit C-190, Witness Clark. Statement of rates and revenue on horses and mules from Arkansas and Louisiana to Memphis.

Defendants' Exhibit No. C-191, Witness Clark. Statement of revenue on horses and mules compared with revenue on other commodities (2 sheets).

Defendants' Exhibit No. C-192, Witness Clark. Statement of present and prior rates on horses and mules from Arkansas and Louisiana to Vicksburg, Miss.

Defendants' Exhibit No. C-193, Witness Clark. Statement of rates and revenues on horses and mules from Arkansas and Louisiana to Vicksburg.

[fol. 2260] Defendants' Exhibits Nos. C-194 to C-199, Witness Clark. Statements of present and prior rates on horses and mules and rates and revenues from points in Arkansas and Louisiana to New Orleans, La., Kansas City, Mo., and Wichita, Kans. (7 sheets).

Defendants' Exhibit No. C-200, Witness Clark. Statement showing class and commodity rates prescribed in Docket 13535 (2 sheets).

Defendants' Exhibit No. C-201, Witness Clark. Statement showing present rate and revenue on horses and mules from Little Rock, Ark., to Wichita, Kans., compared with rates and revenue on other commodities.

Defendants' Exhibit No. C-202, Witness Clark. Comparison of first-class rates prescribed for application in Southeastern territory in Docket 13494 and southwestern territory in Docket 13535, also percentage relationship (3 sheets).

Defendants' Exhibit No. C-203, Witness Clark. Comparison of the Southeast scale on horses and mules increased 10% with the Docket 12358 scale (2 sheets).

Defendants' Exhibit No. C-204, Witness Clark. Statement of rates on horses and mules from C. F. A. territory

to Buffalo, N. Y., showing percentage relationship to first class (2 sheets).

Defendants' Exhibit No. C-205, Witness Clark. 57th Annual Live Stock Report for year 1927.

Defendants' Exhibit No. C-206, Witness Clark. 34th Annual Report of receipts and shipments of livestock at St. Joseph Stock Yards for 1926.

Defendants' Exhibit No. C-207, Witness Clark. Copy of the horse and mule quotations for September 21, 1928, from the St. Louis Daily Globe Democrat paper.

Defendants' Exhibit No. C-208, Witness Swenson. Statement showing comparison of proposed rates on horses and mules with carload rates on other articles. Statement showing average loading on various commodities. Explanation of references, notes, etc. (11 sheets.)

[fol. 2261] Defendants' Exhibit No. C-209, Witness Seggerson. Map showing Southern Pacific Company condensed profiles.

Defendants' Exhibit No. C-210, Witness Seggerson. Statement showing physical characteristics of lines between El Paso and Tucumcari, Tucumcari and Dawson.

Defendants' Exhibit No. C-211, Witness Seggerson. Statement showing population and area in square miles, also population of El Paso County, Texas, 1920.

Defendants' Exhibit No. C-212, Witness Seggerson. Statement showing area, population and population per square mile of Arkansas, Louisiana, Oklahoma and Texas as compared with New Mexico and Texas differential territory.

Defendants' Exhibit No. C-213, Witness Seggerson. Statement showing total receipts as compared with expenditures for labor and taxes of S. P. Co., for 1925 (2 sheets).

Defendants' Exhibit No. C-214, Witness Seggerson. Statement showing cars and tons of horses and mules moving from or to points on Southern Pacific lines in New Mexico.

Defendants' Exhibit No. C-215, Witness Seggerson. Statement showing number of horses, mules, cattle, sheep, goats, swine and chickens for 1920 and 1925 in southwestern territory states and compared with same data for New Mexico and Texas differential territory (3 sheets).

Defendants' Exhibit No. C-216, Witness Seggerson. Statement showing total revenue accruing to Southern

Pacific Co., and the total amount paid in loss and damage claims for the years 1920 to 1927; also shows various relationships and total number of cars handled.

Defendants' Exhibit No. C-217, Witness Seggerson. Statement showing revenue freight traffic density of Texas & New Orleans R. R. in Texas for 1927.

Defendants' Exhibit No. C-218, Witness Pistor. Map of southwestern states showing representative origin points in Oklahoma.

Defendants' Exhibit No. C-219, Witness Pistor. Statement showing short line mileages from Oklahoma origin points for horses and mules to Kansas City and St. Joseph, Mo. (2 sheets).

[fol. 2262] Defendants' Exhibit No. C-220, Witness Pistor. Statement showing present and proposed rates on horses and mules from Oklahoma points to Kansas City and St. Joseph, Mo. (2 sheets).

Defendants' Exhibit No. C-221, Witness Pistor. Statement of minimum revenue per car on horses and mules under Docket 12358 scale compared with revenue on commodities in Docket 13535 (5 sheets).

Defendants' Exhibit No. C-222, Witness Pistor. Statement of rates, revenue per car and per car mile on horses and mules from Oklahoma points to Kansas City, present and proposed, compared with other commodities (7 sheets).

Defendants' Exhibit No. C-223, Witness Pistor. Statement comparing Oklahoma intrastate scale of rates on horses and mules with scale prescribed by I. C. C. in Docket 12358.

Defendants' Exhibit No. C-224, Witness Pistor. Statement showing present and proposed rates on horses and mules from representative Oklahoma points to Oklahoma City, Okla.

Defendants' Exhibit No. C-225, Witness Pistor. Statement of rates, revenue per car and per car mile on horses and mules compared with other commodities moving intrastate between various points and Oklahoma City (7 sheets).

Defendants' Exhibit No. C-226, Witness Pistor. Statement comparing present Oklahoma intrastate rates on horses and mules from representative points to Oklahoma City, with proposed interstate rates from nearby points.

Defendants' Exhibit No. C-227, Witness Pistor. Statement comparing average loading on horses and mules with

representative heavy moving commodities via M-K-T. lines for years 1923 to 1927 (2 sheets).

Defendants' Exhibit No. C-228, Witness Pistor. Statement of revenue and claim payments on livestock via M-K-T. lines for 1923 to 1927, compared with similar figures on all carload traffic except livestock.

Defendants' Exhibit No. C-229, Witness Casler. Railroad map of the A., T. & S. F. System.

[fol. 2263] Defendants' Exhibit No. C-230, Witness Ryser. Statement showing movement of horses and mules and cattle from and to stations on the T. & P. Ry., in differential territory during 1925 to 1926.

Defendants' Exhibit No. C-231, Witness Ryser. Statement showing the average weight and number of cars on various commodities handled via T. & P. Ry. for the first six months of 1928.

Defendants' Exhibits Nos. C-232 to C-235, Witness Ryser. Statements comparing the net and gross revenue per car mile under the carriers' proposed rates on horses and mules from Midland, Kent and Sl Paso, Texas to various points with the revenue on other commodities on rates prescribed by the I. C. C. (33 sheets).

Defendants' Exhibit No. C-236, Witness Ryser. Map of the Texas & Pacific Railway and its connections.

Defendants' Exhibit No. C-237, Witness Ryser. Statement of loaded cars received at and forwarded from stations on the T. & P. Ry., in Texas during 1926 (2 sheets).

Defendants' Exhibit No. C-238, Witness Ryser. Statement of less carload tonnage received and forwarded from stations on the T. & P. Ry., in Texas, in during 1926 (2 sheets).

Defendants' Exhibit No. C-239, Witness Ryser. Statement showing total net ton miles and net ton miles per mile of line on the T. & P. Ry. in Texas and Louisiana during 1926.

Defendants' Exhibit No. C-240, Witness Ryser. Statement of loaded cars received at and forwarded from stations on the T. & P. Ry. in Texas during first 9 months in 1927.

Defendants' Exhibit No. C-241, Witness Ryser. Statement of less carload tonnage received at and forwarded from stations on the T. & P. Ry., in Texas during first 9 months in 1927.

Defendants' Exhibit No. C-242, Witness Ryser. Comparative statement of gross freight charges on traffic inbound and outbound at Ranger, Texas.

[fol. 2264] Defendants' Exhibits Nos. C-243 to C-245, Witness Gillespie. Statements showing the present rates on horses and mules per 36' 7" car, also earnings per car per mile from representative points in Kansas and interstate points to Oklahoma City, Okla., Albuquerque, N. Mex., and Wichita, Kans., as compared with revenue and earnings per car mile on other moving commodities, also earnings on horses and mules based on proposed rates (3 sheets).

Defendants' Exhibit No. C-246, Witness Gillespie. Statement showing the movement of horses and mules, carloads, for the years 1917 to 1927 via the Santa Fe lines.

Defendants' Exhibit No. C-247, Witness Gillespie. Statement showing average tons per car for years 1917 and 1927 on freight revenue traffic handled by A., T. & S. F. Ry. System.

Defendants' Exhibit No. C-248, Witness Gillespie. Statement showing loss and damage claim payments made by the Santa Fe and the revenue earned, segregated as to horses and mules, livestock other than horses and mules, all freight traffic other than livestock and l.c.l. freight.

Defendants' Exhibits Nos. C-249 to C-251, Witness Dowlin. County maps of Kansas, Oklahoma and Texas showing the average population per square mile (3 sheets).

Defendants' Exhibit No. C-252, Witness Dowlin. Statements showing area in square miles, total population, population per square mile and population per mile of railroad in the several counties of Texas; also shows railroad mileages in 15 counties. (11 sheets.)

Defendants' Exhibit No. C-253, Witness Dowlin. County map of New Mexico showing average population.

Defendants' Exhibit No. C-254, Witness Dowlin. Statement showing population at stations on the C., R. I. & G. and C., R. I. & P. in New Mexico and Texas.

Defendants' Exhibits No. C-255, Witness Dowlin. Statement showing total weight of and revenue on less carload freight received at and forwarded from stations on the Rock Island lines in Texas and New Mexico for the years 1924, 1925 and 1926.

Defendants' Exhibit No. C-256, Witness Dowlin. Diagram of the Rock Island lines in Texas and New Mexico.

[fol. 2265] Defendants' Exhibit No. C-257, Witness Dowlin. Statement of revenue freight traffic handled by the C., R. I. & G. in Texas, C., R. I. & P. in New Mexico, during 1924 (2 sheets).

Defendants' Exhibit No. C-258, Witness Dowlin. Statement showing differentials approved by the I. C. C. on various commodities on which column 45 rates or higher were prescribed in Consolidated Southwestern Cases, 123 I. C. C. 203.

Defendants' Exhibit No. C-259, Witness Dowlin. Statements of loss and damage claim payments made by the Rock Island Lines, Southern Pacific Company, T. & P. Ry. Co., St. L. & S. W. Ry., and M., K. & T. Ry., for the years 1920 to 1927, and revenue earned (6 sheets).

Defendants' Exhibit No. C-260, Witness Dowlin. Statement of average loss and damage claim payments on horses and mules made by various lines from 1920 to 1927.

Defendants' Exhibits Nos. C-261 and C-262, Witness Dowlin. Statements showing rates proposed by carriers on horses and mules (3 sheets).

Defendants' Exhibit No. C-263, Witness Waggener. Statement showing Texas & Pacific Co. freight operating statistics for year 1924.

Defendants' Exhibit No. C-264, Witness Waggener. Statements showing comparison of physical cost factors between Differential rate territory and Texas Common Point territory and Louisiana. Basic grade curve and water statistics, and Computation of rise and fall. (4 sheets.)

Defendants' Exhibit No. C-265, Witness Waggener. Profile map of the Texas & Pacific main line.

Defendants' Exhibit No. C-266, Witness Waggener. Statement showing annual rainfall.

Defendants' Exhibit No. C-267, Witness Waggener. Map showing average rainfall, in Texas.

Defendants' Exhibit No. C-268 Witness Waggener. Map showing distribution of people in Texas.

[fol. 2266] Defendants' Exhibits Nos. C-269 and C-270, Witness Waggener. Statements showing operating cost factors between Differential Rate territory and Texas Common Point territory and Louisiana, also freight trains costs (8 sheets).

Defendants' Exhibit No. C-271, Witness Waggener. Statement showing capital expenditures by Texas & Pacific Ry., west of Ft. Worth from January 1, 1927 to June 20, 1928, made necessary by oil field development in Differential territory (2 sheets).

Defendants' Exhibit No. C-272, Witness Rawlings. Statement showing market prices at Kansas City of horses and mules.

Defendants' Exhibit No. C-273, Witness Rawlings. Statement showing total number of car loads handled of horses and mules, and average loading per car via Rock Island lines from 1918 to 1927.

Defendants' Exhibit No. C-274, Witness Rawlings. Comparative basis of present rates on horses and mules, carloads, to present rates first class and percentage relation thereto (2 sheets).

Defendants' Exhibits No. C-275 and C-276, Witness Rawlings. Statements showing comparison of present and proposed rates on horses and mules per 36 ft. car with other moving commodities between the same points, together with distances and per car mile earnings, from various points to Kansas City and St. Louis, Mo. (12 sheets).

Defendants' Exhibit No. C-277, Witness Flansburg. Map of the C. & N. W., and the C., St. P., M. & O. shown as one system. Statement showing number of cars and tons of horses and mules originating on C. & N. W. Ry. in Nebraska and South Dakota duging the years 1922 to 1927. Statement showing per car charge, 1913 versus 1924-1925-1926. Revenue showing average revenue per ton, C. & N. W. Statement showing comparison of average loadings 1913 versus 1927 on C. & N. W. Statement of horses forwarded from Nebraska and South Dakota during 1927. Statement showing earnings on horses and mules for 1926. Statement showing percentage relationship of revenue weight to gross weight on cars of horses and mules as compared with other commodities for 1927, C. & N. W. Statement of movement of comodities 1913 to 1926 via Chicago & N. W. Statement of traffic density for 1927, C. & N. W. Statement showing operating statistics for calendar year 1926, C., St. P., M. & O. Ry. Co. Statement showing traffic [fol. 2267] densities for year 1927. Statement of comparison of 13273 and 12268 scale on horses and mules with southwestern scale, 93 I. C. C. 479. Comparison of horse

and mule rates in 13273 scale I with rates in southeast (Hudson mule), 74 I. C. C. 419. Comparison cattle rates 13273, 12268, C. F. A., 36 I. C. C. 675 and C. F. A. 144 I. C. C. 731, and percentage. Comparison of first class rate under scale applicable in Central Freight Association territory with scale in effect west of the Missouri River known as Clark Scale. Comparison of rates on cement between territories showing percentage relationship of rates applicable between points east of Mississippi River to those west of Missouri River. Description of territories. Statement of proposed rates. Statement showing minimum weights on horses and mules. Set of tariff rules." (28 pages.)

Defendants' Exhibit No. C-278, Witness Flansburg. Map showing zone I, II and III.

Defendants' Exhibit No. C-279, Witness Flansburg. Statements showing comparison of eastbound and westbound rates on horses and mules from and to points in Nebraska from and to Sioux City, Iowa, and Omaha." Statements showing car mile earnings proposed on horses and mules to Sioux City and Omaha, Nebr., from points on the C. & N. W., in Nebraska with same data on other commodities. Comparisons of rates on horses and mules from Nebraska to Sioux City and Omaha with rates on same commodity from Iowa to Chicago. Comparisons of present horse and mule rates with proposed scales to Omaha and Sioux City. Statement showing various scales of arbitraries prescribed by I. C. C. in various proceedings for application in addition to scale for haul in South Dakota west of Missouri River. Comparison of present horses and mules with proposed rates to Chicago, from South Dakota points. Statements showing car mile earnings proposed on horses and mules to Sioux City, Iowa, and Chicago, Ill., from South Dakota on the C. & N. W. Ry. with same data on other commodities. Comparisons of present horse and mules rates with proposed rates from South Dakota to Omaha and Sioux City. Statement showing car mile earnings proposed on horses and mules to Omaha, Nebr., from South Dakota on the C. & N. W., with same data on other comodities. (54 pages.)

[fol. 2268] Defendants' Exhibit No. C-280, Witness Christianson. Map of State of Nebraska and portions of contiguous states. Statement showing cars and tons of live-

stock handled by C., B. & Q. R. R. from 1923 to 1927. Statement showing yearly average prices for horses at Chicago Stock Yards from 1923 to 1927. Statement showing C. B. & Q. R. R. and Q. O. & K. C. loss and damage claim payments on carload business during 1928. Chicago Stockyards Statistics showing receipts and shipments since 1865. Statement showing average loading of carload freight by commodities on C., B. & Q. R. R. for 1910, 1915, 1920, 1923 and 1927. Statement showing actual short line and average mileage between Chicago, Ill., and Missouri River points. Statement showing present and proposed rates on horses from Missouri River crossings to Chicago, also from Nebraska, Colorado, South Dakota and Wyoming to Chicago, Omaha and Denver. Statement showing comparison of proposed rates and earnings on horses from Nebraska, Colorado and Wyoming to Omaha, Chicago and Denver, with present rates and earnings on other commodities. (22 sheets.)

Defendants' Exhibit No. C-281, Witness Timm. Map of Milwaukee Railroad showing ten points in South Dakota referred to. Statement showing mileages in different states in which the Milwaukee Railroad operates. Statement showing proposed scale on horses and mules in western trunk line territory. Statement showing number of cars and tons and average loading of various commodities handled on C., M., St. P. & P. during 1927. Statement showing density of population by states, 1926. Statement of tons carried by states, C., M., St. P. & P., 1926. Statement showing density of traffic by states for C., M., St. P. & P., 1927. Statement showing freight traffic density of Class I roads by states in the Western District, 1926 and 1927. Statement showing density of traffic for C., M., St. P. & P., compared with eastern and southern lines for 1926. Comparative statement of operating revenues and expenses and certain income items, 1921 to 1927. Statement of loaded and empty car miles by classes of equipment, 35 roads, Western District, October, 1926. (14 sheets.)

Defendants' Exhibits Nos. C-282 to C-286, Witness Timm. Statements of comparison of present and proposed rates and earnings on horses and mules from South Dakota to Chicago, Sioux City, Omaha, Kansas City and St. Paul, with similar data on other commodities, C., M., St. P. & P. (50 sheets).

Defendants' Exhibit No. C-287, Witness Timm. Comparison of present and proposed rates on horses and mules from South Dakota to Chicago, Sioux City, St. Paul, Omaha and Kansas City, with rates from St. Louis and Chicago to eastern destinations (5 sheets).

[fol. 2269] List of Exhibits Introduced at Hearing in Docket No. 12358, Texas Live Stock Shippers Protective League et al. v. Director General et al., and Associated Cases, to wit: Wichita Board of Commerce et al. v. Director General et al., Docket No. 11018; Chamber of Commerce of Kansas City v. Alexandria & Western Ry. Co. et al., Docket No. 13001; Ross Bros. Horse and Mule Co. et al. v. Union Pacific R. R. Co. et al., Docket No. 13619; Burnett-Yount Horse and Mule Co. et al. v. A. & S. Ry. Co. et al., Docket No. 13627; Rates on Horses and Mules To, From and Between Southwestern Points, I. & S. No. 2389; Horses and Mules from Kansas City and Wichita to New Orleans, Memphis and Other Points, I. & S. 1483; The Nebraska Live Stock Case, Docket No. 13273; Board of Railroad Commissioners of South Dakota v. Chicago & N. W. Ry. Co., Docket No. 12268, and Fourth Section Applications 461, 462, 621, 673 and 678, Before Examiner Witters at Kansas City, Mo., May 26 and 27, 1932, Included in Plaintiffs' Exhibit KK.

Shippers' Exhibit C-288, Witness Kelley.

Page 1. U. S. Dept. Agric. Bulletin, Livestock on Farms, January 1, 1932, South Dakota.

Pages 422 and 423 of "Crops and Markets", showing farm products data.

Pages 2-3. U. S. Dept. Agric. Bulletin, August 1, 1931, crop reports, South Dakota.

Pages 4-5. U. S. Dept. Agric. Bulletin, October 1, 1931, crop reports, South Dakota.

Pages 5-7. Dept. of Agric. Annual Crop Summary, 1930, crop reports, South Dakota.

Pages 8-13. South Dakota Price Index, 1923-1931.

Pages 14-20. Dept. of Agric. Bulletin, Average Farm Prices, February, 1932.

Shippers' Exhibit C-289, Witness Kelley.

Pages 1-2. Railroad maps of Western Trunk Line Territory and of South Dakota.

Page 3. County map of South Dakota showing population of horses and mules, 1930.

Page 4. Statement showing average loading horses versus edible livestock, South Dakota.

Page 4a. Statement of farm value of horses.

Page 5. Statement re regularity livestock traffic movement, South Dakota.

Page 6. Statement of freight rates, horses compared with fat cattle, early adjustments.

Page 7. Sketch map, cattle rates recently prescribed.

Pages 8-11. Statement of increases, livestock rates to Chicago.

Pages 12-13. Graphs of horse and cattle rates to St. Louis and Chicago.

Page 14. Statement of earnings under livestock and horse rates.

[fol. 2270] Page 14a-14b. Statement of details, rates, hauls, and earnings on shipments of horses.

Page 14c. Analysis carriers' proposed rates and earnings on horses compared with other commodities.

Page 15. Statement, changes horse rates from South Dakota points which would arise from carriers' proposed rates.

Page 15a. Blue print comparing carriers' proposed rates from South Dakota and Nebraska versus other western states to Chicago.

Page 15b. Statement of relationship between horse and fat cattle rates.

Page 16. Sketch map showing boundaries of various class rate territories under I. C. C. decisions.

Page 17. Sketch map showing boundaries prescribed in Docket 17000-2, 164 I. C. C.

Page 18. Statement present intrastate class rates versus 17000-2 rates.

Page 19. Statement December, 1931, intrastate class rates compared with 17000-2 rates.

Page 20. Statement showing effect of 17000-2 decision on class rates.

Page 21. Sketch map showing rate groupings in South Dakota.

Page 22. Sketch illustrating comparative level of class rates in western trunk line territory versus western states.

Page 23. Statement, comparative first-class W. T. L. rates versus other districts.

Page 24. Statement percentage relationship W. T. L. class rates scales with C. F. A. scale.

Page 25. Graph of relative rate levels between Iowa and South Dakota.

Page 26. Map illustrating development in eastern South Dakota compared with southern Minnesota.

Page 27. Graph illustrating difference rate level in Minnesota versus Minnesota-South Dakota interstate.

Page 28. Statement illustrating trucking of livestock within, to and from South Dakota.

Page 29. Statement receipts and drive-ins of livestock at markets.

[fol. 2271] Page 30. Statement of receipts and drive-ins of hogs at markets.

Page 31. Map, South Dakota highway system.

Page 32. Statement showing relationship fat cattle rates to first-class rates in eastern territory versus W. T. L. territory.

Page 33. Statement maximum classification rates on field seeds.

Page 34. Statement showing relationship of rates on refined petroleum products.

Page 35. Analysis of rates on roofing materials, W. T. L. territory.

Page 36. Analysis of rates on newsprint paper in W. T. L. territory.

Page 37. Statement showing volume of shipments of deciduous fruits from California.

Pages 38-39. Commodity traffic statistics, western rates, 1927.

Pages 40-41. Commodity traffic statistics for C. M. & St. P. Ry., 1927.

Page 42. Statement of Commission cases establishing commodity distance scales.

Page 43. Comparative statement of rate progressions under various scales.

Page 44. Outline of comparative basic adjustments prescribed in General Grain Case.

Page 45. Graph showing rates and gradations on cottonseed meal.

Page 46. Synopsis of certain Commission proceedings to improve carriers' revenues.
Page 47. Statement of traffic density C., M., St. P. & P. R. R.
Page 48. Details of Commission valuations of C. & N. W. Ry.
Page 49. Statement showing valuations of various railroads.
Page 50. Statement of expenses of railroad operations within South Dakota.
Page 51. Statement of operating averages.
Page 52. Other data relative to South Dakota operation.

[fol. 2272] Shippers' Exhibit C-290, Witness Kelley. Pamphlet, South Dakota Agricultural Outlook, 1932.

Shippers' Exhibit C-291, Witness Tedrow.
Page 1. Statement of receipts of horses and mules at principal markets, 1900-1931.
Page 2. Number and value of horses on farms.
Pages 3-4. Statement of horse and mule farm prices.
Pages 5-6. Monthly price, by months of horses and mules.
Page 7. Kansas City horse and mule rates.
Pages 8-9. Statement of yearly receipts of horses and mules at Kansas City.

Shippers' Exhibit No. C-292, Witness Tedrow. Statement of horse and mule values to purchasers. Shippers' Exhibit No. C-293, Witness Tedrow. Statement of receipts, Kansas City, horses and mules, 1927-1932.

Shippers' Exhibit No. C-294, Witness Christianson.
Page 1. Statement showing volume of livestock handled by C., B. & Q.
Page 2. Statement, yearly average price of horses at Chicago.
Page 3. Statement, loss and damage claims.
Pages 4-5. Chicago Livestock receipts.
Pages 6-7. Statement average car loadings on C., B. & Q.
Page 8. Statement, short-line mileage Chicago to Missouri River points.

Pages 9-10. Statement comparing present and proposed rates on horses.

Shippers' Exhibit C-295, Witness Ross (Nebraska case).

Page 1. Railroad map of Nebraska.

Pages 2-3. Statement showing number and value of horses in Nebraska by counties.

Page 4. Statement comparing number of horses and mules in Nebraska with miles of railroad.

Pages 5-7. Comparison by states of head of livestock on farms with miles of railroad.

[fol. 2273] Page 8. Statement of number of head and value of livestock in Nebraska.

Pages 9-10. Comparison of horse rates with those on cattle.

Pages 11-12. Comparison of revenues realized on horses with cattle revenues.

Pages 13-14. Statement of distances and comparison of rates of horses and cattle to Kansas City.

Pages 15-16. Shows revenues, horses and cattle to Kansas City.

Page 17. Statement showing distance, comparison of rates on horses and mules and cattle.

Pages 18-19. Statement showing revenues, etc.

Page 20. Statement re livestock rates to Chicago.

Page 21. Statement showing comparative rates on Livestock to Chicago.

Pages 22-23. Statement showing revenue on livestock to Chicago.

Page 24. Statement showing comparative rates between horses and mules and cattle to South Omaha, Nebr.

Page 25. Statement showing comparative rates between horses and mules and cattle to Kansas City.

Page 26. Statement showing comparative rates between horses and mules and cattle to Sioux City, Iowa.

Page 27. Statement of traffic density in Nebraska.

Pages 28-29. Statement showing operating expenses, Nebraska lines.

Pages 30-36. Statement re operating expenses and revenues for Nebraska.

Page 37. Omitted.

Page 38. Statement of livestock receipts at South Omaha.
Page 39. Statement of livestock trucked to Omaha.
Pages 40-41. Statement of chattel mortgages in Nebraska.
Pages 42-50. Statement of failed banks in Nebraska.
Page 51. Outline map showing location of failed banks in Nebraska.

[fol. 2274] Carriers' Exhibit No. C-296, Witness Wettling.
Pages 1-3. I. C. C. statement property value and operating income Class I railroads.
Page 4. Description, revenues and expenses, Class I railroads, 3 months, 1932.
Page 5. Statement railroad revenue shortage under 5¾ per cent, western district.
Page 6. Statement of trend of operating expenses, western district.
Page 7. Statement re railroad employees' compensation.
Pages 8-9. Revenue freight statistics.
Pages 10-11. Statement of early maturing obligations Class I railroads, western district.
Pages 12-15. Statement of water tonnages.
Page 16. Statement of freight traffic density, Class I railroads, western district.
Pages 17-18. Statement comparative freight traffic density of roads, 1928.

Carriers' Exhibit C-297, Witness Wettling. Statement of property investment, operating income, etc.

Carriers' Exhibit C-298, Witness Wettling.
Page 1. Statement of number and value of horses and mules on farms throughout the United States.
Page 2. Similar data divided as to states.
Page 3. Monthly farm prices, horses and mules and stock feed.
Page 4. Statement of number of motor trucks and tractors on farms, by states.

Carriers' Exhibit C-299, Witness Clark. Annual report of Kansas City Stockyards.

Carriers' Exhibit C-300, Witness Clark. Statement of receipt and shipments, St. Joseph stockyards.

Carriers' Exhibit C-301, Witness Clark. 39th Annual Report of receipts and shipments of livestock at St. Joseph Stockyards for year 1931.

[fol. 2275] Carriers' Exhibit C-302, Witness Flansburg. Revision of Exhibit C-277, Witness Flansburg.

Page 1. Shows cars and tons of horses and mules originated on C. & N. W. Railway in Nebraska and South Dakota compared with other livestock.

Page 2. Statement showing per car charges 1913, 1924 to 1931, inclusive, amount per car, C. & N. W. revenue.

Page 3. Revised page 4, Flansburg, Exhibit 277, average revenue per ton, C. & N. W.

Pages 4-5. Revised page 5, Flansburg Exhibit 277, comparison average loading 1913 with 1927 and 1931.

Pages 6-7. Statement showing percentage relationship of revenue weight to gross weight on cars of horses and mules, as compared with relationship on other commodities for 1930, C. & N. W.

Page 8. Revised pages 10 and 11, Flansburg Exhibit 277, movement of commodities, 1913 to 1931, inclusive, C. & N. W.

Page 9. Revised page 12, C. & N. W. traffic density for series of years.

Pages 10-11. Corrected proposal, W. T. L. carriers to Flansburg Exhibit 277, page 26.

Carriers' Exhibit C-303, Witness Flansburg. Corrected pages to Flansburg Exhibit 279, presented Kansas City hearing October 1, 1928.

Pages 1-10. Proposed corrections covering rates on horses and mules to Sioux City, Iowa, Omaha, Nebr.

Carriers' Exhibit C-304, Witness Flansburg.

Page 1. C. & N. W. loss and damage claim adjustments on carload business, various commodities, during year 1930, showing revenue claim payments and present claim payments of revenue.

Pages 2-3. Statement, rates for distances 5 to 800 miles, eastern first-class, western zone.

Pages 4-5. Statement, rates for distances 5 to 800 miles, southern first-class.

Pages 6-7. Statement indicating percentage eastern livestock rates of western first class.

Pages 8-9. Statement, first 13494 rates, southern cattle 17000, part 9 rates, percentage thereof, W. T. L. rates.

Page 10. Statement eastern 4th class rates prescribed by Commission on horses for slaughter, 155 I. C. C. 183, eastern cattle rates, 165 I. C. C. 277, and percentage.

Page 11. Statement showing 17000-9, western cattle rates, W. T. L., zones I, II and III as proposed and percentage of western cattle rates.

[fol. 2276] Page 12. Comparison of above rates with eastern 2nd and 4th class rates and percent.

Page 13. Western cattle rates and 115 per cent thereof compared with eastern 2nd and 4th class and percent.

Page 14. Southern Cattle 171 I. C. C. 721, and southern horse and mule rates and per cent., 74 I. C. C. 419.

Page 15. Southern horse and mule rates, southern first and percent.

Carriers' Exhibit C-305, Witness Timm, containing revised pages 1, 3, 4, 7, 8. 9 and 10 of Exhibit C-281, Witness Timm.

Page 1. Title Sheet.

Page 2. Map, C., M. & St. P. & P. Railroad with certain stations indicated.

Pages 3-4. Revision of page 3-a of Exhibit 281, statement showing proposed scale on horses and mules in W. T. L. Territory.

Page 5. Revision of page 4-a of Exhibit 281, statement of number of cars, tons and average loadings or horses and mules and other commodities handled by C., M., St. P. & P. 1928 to 1931, inclusive.

Page 6. Revision of page 7a of Exhibit C-281, statement showing density of traffic by states for C., M., St. P. & P., 1930-1931.

Page 7. Revision of page 8a of Exhibit C-281, statement showing freight traffic density of class I roads by states in western district, 1929-1930.

Page 8. Revision of page 9 of Exhibit C-281, Statement showing C., M., St. P. & P. traffic density by states for 1927.

Pages 9-10. Revised page 10a of Exhibit C-281, comparative statement of operating revenues, expenses and certain items, C., M., St. P. & P., 1927-1931.

Carriers' Exhibit C-306, Witness Timm. Revision of Exhibit C-282.

Page 1. Title sheet.

Pages 2-11. Revision of Exhibit C-282, comparison of present and proposed rates and earnings on horses and mules from various South Dakota points to Chicago, C., M., St. P. & P.

Carriers' Exhibit C-307, Witness Timm.

Pages 1-10. Revised Exhibit C-283, Witness Timm. Comparison of present and proposed rates and earnings on horses and mules from various South Dakota points to Sioux City, Iowa, C., M., St. P. & P.

[fol. 2277] Carriers' Exhibit C-308, Witness Timm.

Pages 1-12. Revision of Exhibit C-284, Witness Timm, showing comparison of present and proposed rates and earnings on horses and mules from various South Dakota points to Omaha, Nebr., C., M., St. P. & P.

Carriers' Exhibit C-309, Witness Timm.

Pages 1-7. Revision of Exhibit C-285, Witness Timm, showing comparison of present and proposed rates and earnings on horses and mules from various South Dakota points to Kansas City, Mo., C., M., St. P. & P.

Carriers' Exhibit C-310, Witness Timm.

Pages 1-7. Revision of Exhibit C-286, Witness Timm, showing comparison of present and proposed rates and earnings on horses and mules from various South Dakota points to St. Paul, Minn., C., M., St. P. & P.

Carriers' Exhibit C-311, Witness Timm.

Page 1. Title page.

Page 2. Revision of page 1 of Exhibit C-287, Witness Timm, showing comparison of present and proposed rates on horses and mules from various points in South Dakota to Chicago, Ill., with rates from Chicago and St. Louis to eastern destinations for equal distances, C., M., St. P. & P.

Page 3. Revision of Page 2 of Exhibit C-287, showing comparison of present and proposed rates on horses and mules from various points in South Dakota to Sioux City, Iowa, with rates from Chicago, and St. Louis to eastern destinations for equal distances, C., M., St. P. & P.

Page 4. Revision of page 3 of Ex. C-287, showing comparison of present and proposed rates on horses and mules from various points in South Dakota to St. Paul, Minn., with rates from Chicago, Ill, and St. Louis, Mo., to eastern destinations for equal distances, C., M., St. P. & P.

Page 5. Revision of page 4 of Ex. C-287, showing comparison of present and proposed rates on horses and mules from points in South Dakota to Omaha, Nebr., with rates from Chicago and St. Louis to eastern destinations for equal distances, C., M., St. P. & P.

Page 6. Revision of Page 5 of Ex. C-287, showing comparison of present and proposed rates on horses and mules from points in South Dakota to Omaha, Nebr., with rates from Chicago and St. Louis to eastern destinations for equal distances, C., M., St. P. & P.

Carriers' Exhibit C-312, Witness Timm.. Supplementary exhibit showing representative summary of present adjustment on horses and mules contrasted with original and present proposal and their percentage relation to the present rates.

[fol. 2278] Carriers' Exhibit C-313, Witness Timm. Exhibit showing present adjustment on horses and mules from Chicago, Ill. and St. Louis, Mo., to representative destinations in Central and Trunk Line Territory showing also where commodity rates are in effect, their relation to the first class rate. Where no commodity rates are in effect 2nd class or 85 per cent of first class applies.

Carriers' Exhibit C-314, Witness Dowlin. Sketch map of Texas by counties.

Carriers' Exhibit C-315, Witness Dowlin. Sketch map of New Mexico by counties.

Carriers' Exhibit C-316, Witness Dowlin. Sketch map of Arizona by counties.

Carriers' Exhibit C-317, Witness Dowlin.

Pages 1-7. Statement showing population of Texas, by counties, segregated as to common point, differential and mixed.

Carriers' Exhibit C-318, Witness Dowlin. Statement showing area, population per county and average population per square mile of Texas counties situated west of and adjacent to the differential line.

Carriers' Exhibit C-319, Witness Dowlin.

Pages 1-2. Statement showing population of the states of Arizona and New Mexico by counties.

Carriers' Exhibit C-320, Witness Dowlin.

Page 1. Statement of loss and damage claim payments made by the Rock Island Lines and revenue earned segregated as to horses and mules, carloads; livestock other than horses and mules, carloads; all carload freight traffic other than all livestock, indicating the percent that the loss and damage claim payments on each class of traffic mentioned bears to the revenue earned on same for the years 1924 to 1931, inclusive.

Page 2. Statement of loss and damage claim payments made by Sou. Pac. Co. (Pacific Lines), and revenue earned segregated as to horses and mules, carloads; livestock, carloads, other than horses and mules; all carload freight traffic other than all livestock, indicating the percent that the loss and damage claim payments on each class of traffic mentioned above bears to the revenue earned on same for years 1920 to 1931, inclusive.

[fol. 2279] Page 3. Statement of loss and damage claim payments made by the Texas & Pacific Ry. and revenue earned segregated as to horses and mules, carloads; livestock, carloads, other than horses and mules; all carload freight traffic other than all livestock, indicating the percent that the loss and damage claim payments on each class of traffic mentioned above bears to the revenue earned on same for the years 1922 to 1931, inclusive.

Page 4. Statement of loss and damage claim payments made by St. Louis Southwestern Ry. Co. of Texas and revenue earned segregated as to horses and mules; livestock other than horses and mules, carloads; all carload freight traffic other than all livestock, indicating the percent that the loss and damage claim payments on each class of traffic mentioned bears to the revenue earned on same for the years 1924 to 1929, inclusive.

Page 5. Summary of preceding pages.

Carriers' Exhibit C-321, Witness Dowlin. Statement of loss and damage claim payments made by Missouri Kansas Texas Railroad Company of Texas and Revenue earned segregated as to livestock, carloads, and all carload traffic other than livestock, indicating the percent that the loss and damage claim payments on each class of traffic mentioned bears to the revenue earned on same for the calendar years 1924 and 1926 to 1931, inclusive.

Carriers' Exhibit C-322, Witness Dowlin. Statement showing average loss and damage claim payments on horses and mules, carloads, made by lines named for the periods indicated in Column 1.

Carriers' Exhibit C-323, Witness Bordelon.

Pages 1-5. Comparison of Texas Differential Territory with Texas Common Point Territory and Florida Differential Territory.

Carriers' Exhibit C-324, Witness Bordelon.

Pages 1-7. Statement showing, for lines in Southwestern Region, traffic affected by proceedings in rate cases before the I. C. C., based on 1930 movement.

Carriers' Exhibit C-325, Witness Brandt. Statement showing movement of horses and mules, carloads, via Santa Fe System lines for years 1928 to 1931, inclusive, and bringing down to date the movement as previously shown in Exhibit C-246.

Carriers' Exhibit C-326, Witness Brandt. Statement showing average tons per car for years 1917, 1927 and 1931 on freight revenue traffic handled by A., T. & S. F. Ry.

[fol. 2280] Carriers' Exhibit C-327, Witness Brandt. Statement of loss and damage claim payments made by the Santa Fe Ry. System and revenue earned segregated as to

horses and mules; livestock other than horses and mules; all freight traffic other than all livestock and L. C. L. freight; all L. C. L. freight traffic, indicating the percent that the loss and damage claim payments on each class of traffic mentioned above bears to the revenue earned, for the years 1930 and 1931.

Carriers' Exhibit C-328, Witness Brandt. Statement showing first, second and fourth class rates prescribed by the I. C. C. in the Eastern Class Case, 171 I. C. C. 481, also class rates prescribed in Southwest in 23 I. C. C. 203; present rates on horses and mules in Southwest common point territory prescribed by the Commission in I. C. C. Docket 12358; Southwestern Lines proposed scale for application in common point territory; rates proposed by the Examiner in the reopened Docket 12358; also percentage that the Southwestern and Examiner's proposed scale is of the present horse and mule rates in Eastern territory and percentage the Examiner's proposed scale is of rates in Official Classification Territory applicable on horses for slaughter. (2 sheets.)

Carriers' Exhibit C-329, Witness ——. Ratio of direct freight operating expenses to total freight operating expenses for year 1927.

Carriers' Exhibit C-330, Witness ——. Analysis of operating expenses for year 1927, freight service only. Comparing out of pocket freight train mile expenses with total freight operating expenses for all class I railroads and Texas & Pacific Ry.

Carriers' Exhibit C-331, Witness Long. Statement showing gross and net ton miles per mile of road on Rio Grande Division of Texas & Pacific Ry Co.

Carriers' Exhibit C-332, Witness Ryser.

Pages 1-3. Statement for counties through which the Texas & Pacific Railway extends showing the area (in square miles), 1910, 1920 and 1930 Census Bureau population (total and per square miles), also totals for common point counties and for differential territories counties including Glasscock, Andrews and Crane Counties.

Carriers' Exhibit C-333, Witness Ryser.

Pages 1-3. Statement for counties in Texas differential territory through which the Texas & Pac. Ry.

operates, showing the area (in square miles), 1920 and 1930 Census Bureau population (total and per square mile); also similiar information for Glasscock, Andrews and Crane Counties and the State of New Mexico.

[fol. 2281] Carriers' Exhibit C-334, Witness Ryser, Statement showing area (in square miles) of Arizona Counties with the 1920 and 1930 population (total and per square mile).

Carriers' Exhibit C-335, Witness Ryser.

Pages 1-2. Statement showing movement of horses and mules, also livestock other than horses or mules, from and to stations on the Texas & Pacific Ry., Stanton to El Paso, inclusive, for the year 1931; also the number of horses and mules, also cattle handled by the Texas & Pacific for years 1923 to 1931, inclusive.

Carriers' Exhibit C-336, Witness Ryser.

Pages 1-3. Statement showing number of carloads received and forwarded from stations on the Texas & Pacific Ry., Stanton to El Paso, Texas, inclusive, for the years 1925, 1928 and 1931.

Carriers' Exhibit C-337, Witness Ryser.

Pages 1-3. Statement showing number of pounds of less than carload freight received and forwarded from stations on the Texas & Pacific Ry., Stanton to El Paso, inclusive, for years 1925, 1928 and 1931.

Carriers' Exhibit C-338, Witness Ryser.

Pages 1-2. Comparative statement of freight charges on freight traffic originating at or destined Texas & Pacific Ry. stations named during years 1926 to 1931.

Carriers' Exhibit C-339, Witness Ryser.

Pages 1-2. Statement showing number of cars and tons of products of agriculture, animals and products, crude petroleum oil, products of mines, products of forests, refined petroleum and products, bar, sheet and structural iron and iron pipe—manufactures and miscellaneous; also all carloads and less carloads handled by the T. & P. Ry. during years 1923 to 1931. Also revenue derived therefrom.

Carriers' Exhibit C-340, Witness Ryser.

Pages 1-2. Statement showing by months the number of cars crude petroleum handled by the Texas & Pacific Railway from Wicket, Pyote and Monahans, Texas, during January 1, 1927, to March 31, 1932, inclusive.

Carriers' Exhibit C-341, Witness Ryser. Statement showing the tonnage and freight revenue on the Texas-New Mexico Ry. for years 1930 and 1931.

Carriers' Exhibit C-342, Witness Ryser. Statement showing number of carloads received and forwarded to and from stations on the Texas-New Mexico Ry. for the years 1930 and 1931.

[fol. 2282] Carriers' Exhibit C-343, Witness Ryser.

Pages 1-2. Statement comparing total mileage operated by the differential lines shown in Appendix 4 to the Proposed report of Examiner Simon in this proceeding for year ending December 31, 1925, with the distance in differential territory and the percent the differential mileage is of total mileage operated.

Carriers' Exhibit C-344, Witness Ryser.

Pages 1-2. Statement showing percentage relationship between the rates on beef cattle in effect April 20, 1925, also prescribed in 122 I. C. C. 609, and the rates on horses and mules prescribed in 93 I. C. C. 479.

Carriers' Exhibit C-345, Witness Ryser. Statement showing for the year 1929 the number of and value per head of horses and mules, also cattle and calves, on the farms for the year 1929, as taken from tables 350, 432 and 433 of the "Year Book of Agriculture 1930." There is also shown the relative carload movement of horses and mules compared with cattle and calves, single deck.

Carriers' Exhibit C-346, Witness Ryser. Statement of originated traffic on Class I railways in the territories shown for year 1929 as obtained from I. C. C. statement No. 30100.

Carriers' Exhibit C-347, Witness Ryser. Statement of traffic handled on class I railways in the territories shown for year 1929 as obtained from I. C. C. Statement No. 30100.

Carriers' Exhibit C-348, Witness Ryser. Statement of originated traffic on class I railways in the territories shown

for year 1930 as obtained from I. C. C. Statement No. 31100.

Carriers' Exhibit C-349, Witness Ryser. Statement of traffic handled on class I railways in the territories shown for year 1930 as obtained from I. C. C. Statement No. 31100.

Carriers' Exhibit C-350, Witness Ryser.

Pages 1-2. Statement showing the percentage relationship between Southeastern and Southwestern first-class scales and on sugar, carloads.

[fol. 2283] Carriers' Exhibit C-351, Witness Ryser.

Pages 1-4. Testimony in No. 24674, J. W. Patterson Commission Company, complainant, and sub-complaints thereto as to increased movement of horses and mules from the southwest and the western district to the Atlanta market.

Carriers' Exhibit C-352, Witness Ryser.

Pages 1-3. Testimony as to the use of animals of lighter weight than formerly.

[fol. 2284] [File endorsement omitted.]

[fol. 2285] Endorsed on cover: File No. 39,298. W. Missouri, D. C. U. S. Term No. 670. Texas and New Orleans Railroad Company, The Texas and Pacific Railway Company, Abilene & Southern Railway Company, et al., Appellants, vs. The United States of America and Interstate Commerce Commission. Filed January 28, 1935. File No. 670, O. T., 1934.